# THE PRACTICE OF THE *High Court of Chancery.*

WITH

The Nature of the ſeveral Offices belonging to that COURT.

AND

The Reports of many Caſes wherein Releif hath been there had, and where denyed.

---

*Nullus recedat à Curia Cancellariæ ſine Remedio: Per Cancellarium in* 4 H. 7. 5.

---

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# THE PRACTICE

# TO THE READER.

Courteous Reader,

THE Title of this Book promiseth much, yet I dare assure thee no more then the Body of it will afford. And although something of this Subject hath been heretofore Printed, yet (without prejudice to them) I may boldly say, That none hath traced the path of Truth so fully and clearly (in the particulars mentioned in the Title) as the Composer of the ensuing Discourse hath done. But knowing the Proverb, That Verbum sapienti sat; and taking thee (Reader) for one of that stamp, I am resolved not

not to forestall thy satisfaction by further commendations of that which (being read and understood) will sufficiently commend it self: However I shall desire thee to pardon and amend the Errata's (for without doubt there will be some) of the Transcriber and Printer; in confidence of which courtesie, I will give thee passage out of this short entry into the fair house of the following Tract. Vale.

THE

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# Chancery.

## *Some Collections of the course of Proceedings in Chancery in English Suits.*

THE Original Writ in English Suits, is a *Subpœna* directed to the Defendant *ad respondendum* at such a mans Suit at the day of the return of the Writ, because of the words of the Writ, (*subpœna Centum libr.*) contained therein, though inserted but *in terrorem*, Plaintiffs may now take forth *subpœna ad respondendum* before the Filing of their Bills. *Subpœna ad comparend.*

The Writ of *subpœna* to answer, revive, rejoyn, to rebuttie, or to hear Judgement is to be served before the return thereof be past, which is done either by delivering the Writ it self under Seal to the Defendants person, or by shewing the Writ under Seal to him, and delivering him a Note of the day of his appearance; If the Defendant be not met with- *How it may be served.*

all, the Writ under Seal may be left at the Defendants house or place of usual resort with one of that Family, for him to take knowledge thereof.

*Default of appearance.*

If then the Defendant upon such service make default, and appear not, then upon an *Affidavit*, made (positive and certain of the day and place of such service of the *subpœna*, and the time of the return thereof, that it may appear that such service was made, if in *London* or within twenty miles thereof, four days at the least excluding the day of such service, and if above twenty miles, then eight dayes) before a Master of Chancery, that the *subpœna* was so served, the Bill of Complaint being then filed (as it then must be) a Writ of Attachment is then of course made out against the Defendant to attach his body, and to bring him in, and such attachment shall not be discharged but upon payment of usual Costs, and so the succeeding Costs to be double.

*Attachment granted of course after filing of the Bill.*

*A Letter instead of a subpœna to a Baron.*

*If a Baron appear not upon a Letter, then upon motion a subpœna is granted.*

*But if he appear upon the Letter, and departs without answer, an Attachment.*

Barons of the Realm being Defendants, instead of a *subpœna* have a Letter directed unto them by the Lord Chancellor for their appearance, and a day therein prefixed, which if they neglect to do, then the ordinary process of *subpœna* upon motion is awarded against them: If they appear upon the Letter, and after appearance depart without making answer, then they are passed the *subpœna*, and no process then but an Attachment is to go forth against them after appearance, which could not have been upon a Letter only (if he had not appeared) in regard no great Seal was seen.

M Jac.

M. *Jac.* the Lord Viscount *Norris* being Defendant at the Suit of *Leicester*, coming to the hearing of his Cause, took exception that he was served with a *subpœna* and not with a Letter, *ad audiendum judicium*: the Chancellor said, that Letters being but of courtesie, began first in the 16. Year of Q. *Eliz.* *ad respondend.* and many Letters have been since *ad audiendum judicium*.

*goes forth of course.*

*Lord Norris his Case.*

*Letters to be but of courtesie.*

The Writ of Attachment is directed to the Sheriff of the County, where the Defendant is supposed to be at the time; And if the Sheriff do return a *Non est inventus* against the Defendant, then a Writ of Attachment with a Proclamation is of course made out against the Defendant, and if the Sheriff return *Non est inventus* upon that Writ, then there issueth out a Commission of Rebellion to such Commissioners as the parties will name, who after they have done their diligence to apprehend the party, and cannot, and return likewise *Non est inventus*, upon motion made of such endeavours and proceedings, and that the Defendant cannot be found, a Serjeant at Arms if the matter in question be for Lands in the Defendants possession, an Injunction for the possession of the Lands hath been awarded for the Plaintiff *quousque*, &c.

*Attachment how directed.*

*Commission of Rebellion to whom directed.*

*Injunction for possession of Lands quousque.*

If the Sheriff or Commissioners take the Defendant, they are to take Bayl of him for his appearance upon the return of the process, and upon the *Cepi corpus* returned, he answers the Plaintiffs Bill, and pays the Plaintiff his ordinary charges, *viz.* 10. sh. for the Attachment, 20. sh. for the Proclamation, and if he be at Commission of Rebellion 40. sh. and then

*what the party must do after he is arrested by the Sheriff or Commissioners.*

*Charges for Contempts.*

*What is to be done if the party appear not after a Capi Corpus returned.*

he is commonly discharged of his contempt.

If a *Capi Corpus* be returned by the Sheriff or the Commissioners, and the Defendant comes not in upon such Return, a day is given to the Sheriff upon pain of 5 l. to bring in his Prisoners body, which pain is to be estreated into the Exchequer; And if the Defendant cannot be brought in, and the Sheriff doubteth the Bond taken by him will not save him harmless of such Fines, the same process against the Defendant hath been by motion for the Sheriff renewed, that he may take better hold of him.

*Affidavit against Affidavit not allowed.*

*Affidavit* against *Affidavit* is not allowed for avoiding manifest perjury; But the last *Affidavit* is holden in such cases void, and the party put to prosecute the first *Affidavit*-maker (if he have cause) for his false Oath, as he may; and no matter of proof or disproof of the thing in question must be inserted into one *Affidavit*.

## *English Bills exhibited in Chancery.*

*Bills: If at the return of the Subpœna no Bill be put in, the Plaintiff shall pay Costs.*

A Bill *ad sectam* is the ordinary Bill exhibited in this Court, for relief in equity; and if the Defendant appear at the return of the *Subpœna*, and no Bill be put then in against him, he is to have Costs awarded against the Plaintiff for such his wrongful vexation.

*Matters in the Bill ought to be sufficient.*

And such a Bill *ad sectam* ought to contain in it sufficient matter to entitle the Court to hold plea thereof, as also wherewithal to charge-

charge the parties named Defendants therein, or else such Defendants may demur upon the Bill.

No Councellour ought to put his hand to any Bill, Answer, or other pleading unless it be drawn, or at least perused by himself in the paper Draught before it be Ingrossed, and they are to take care that the same be not stuffed with repitition of Deeds, Writings or Records *in hac verba*; but the effect and substance of so much of them only as is pertinent and material to be set down, and that in brief terms, without long and needless Traverses of points not traversable, Tautologies, Multiplications of words, or other Impertinencies, occasioning needless prolixity, that the ancient brevity Succinctness in Bills, and other pleadings may be restored and observed.

If there be contained in any Bill, Answer, or other pleadings Interrogatory, any matter Libellous, or Slanderous against any that is not party to the Suit upon matters, impertinent or in Derogation of the setled authority of his Majesties Courts, such Bills, Answers, Pleadings, or Interrogatories are to be taken off the File and suppressed, and the parties severally punished by commitment or Ignominy, as shall be thought fit, for the abuse of the Court; The Councellors at Law what hath set their Hands are liable to the penalty of good Costs to be paid to the party greived before such Council be heard in Court.

All Bills are to be dated the same day they are brought into the six Clerks Office, and no six Clerk is to Auditare any Bill, and

no under Clerk is to keep any Bill by him, but with the first opportunity deliver the same to the six Clerk or his allowed Deputy, in his absence to be accordingly filed.

No Bill Answer or other Pleading, be truly to be of Record, or to be of any effect in Court until the same be filed with such of the six Clerks with whom it ought properly to belong.

*One Bill against several persons for several causes, or for divers persons for several causes disallowed.*

Where divers Plaintiffs for different and several causes have joyned in one Bill, as likewise where a Bill hath been preferred by one Plaintiff against divers Defendants for several and different causes, Bills of both these natures have been disallowed; And Bills of Conformity (which were Bills *ad sectam* when some Creditors had agreed with their deceased Debtors to remit part of their Debts, and to inforce his other Creditors to do the like) which were lately used are now vanished, having been for the inconveniency thereof prohibited by Proclamation.

*Bills of Conformity what they are, and why abolished.*

*Bills of Reviver by the Heir or Executor, but not by an Assignee.*

Bills of Reviver lye where the Defendant having answered the Bill *ad sectam*, and no further proceedings have been had thereupon, and then one of the parties dieth, whereby that Suit is abated, the Heir or Executors that is interessed may have a Bill of Reviver, but for an Assignee it lyeth not; *Mayselwood contra Reynolds* M. 23. *Eliz.* And Reviver upon Reviver lyeth until the Interest of the thing in question be determined.

*Reviver upon Reviver.*

*A Feme-sole Plaintiff taketh Husband, the*

If a Feme-sole being Plaintiff take a Husband hanging her Suit, by this her own Act her Suit is abated, and she and her Husband are put to

a

a Bill of Reviver, otherwise it is where the Defendant and so marrieth; the Plaintiff may still go on in his Suit, which by such her Act she cannot hinder being Defendant. Upon Oath that a *Subpœna ad Revivendum* was served, if the Defendant doth not come in upon the return thereof (as he may chuse, for it is no contempt) and plead some Plea why the former proceedings should not stand revived against him; Upon an *Affidavit* that the process was so served, the cause is to stand revived against him, and all the proceedings, orders, and process thereupon; and the Plaintiff may go on where he formerly left; But the cause doth not stand so revived by a Bill preferred only until process served, and the day wherein the Defendant is to plead be past, for peradventure he may plead that he is not the party subject to the matter so in demand.

*Suit falleth without a Bill of Reviver. Otherwise where she is Defendant. No Reviver until the Subpœna be served, and the return be past.*

An Executor (his Testator dying after publication) is not permitted to exhibit a new Bill upon that matter whereby to make further proofs, but is to hold to a Bill of Reviver, and so to proceed upon the Examinations so published in his Testators life time.

*Executors after publication in the life time of their Testators, may not have a new Bill but a Bill of Reviver.*

The Bill called a *Certiorari* Bill, which is a Bill which doth pray a special *Certiorari* to remove a Suit depending in *London*, &c. upon such suggestions of Equity therein contained, which special *Certiorari* is granted and assigned by the Lord Keeper upon a Certificate of the six Clerks Attorney in the cause, that the Bill is already filed, & a Bond is then also to be entred into by the Plaintiff, which is taken by the Register to prove the suggestion of his Bill

*A Certiorari Bill to remove a suit depending in London*

*West's Presidents* 257. *b.* 258.

within fourteen dayes of the return of which the Writ is made returnable, *Infra* xiiij *dies* of the Receipt of the Writ, *&c.* If the Plaintiff fail to make his proofs within the time, a *Procedendo* may be awarded to the Inferiour Court, unless the Plaintiff shall get an order in the mean time for further time to make his proofs upon an *Affidavit* of the remoteness of the Witnesses, as being yet beyond Sea, *&c.*

*The manner to proceed in it, ib.* 174.

And if the Plaintiff make his proofs within the time, yet those Examinations shall not be after used upon the hearing of the cause, but the parties are then to proceed in ordinary course in the cause, and so in the Examination of their Witnesses on both sides, the first proofs being only to give the Court Jurisdiction, wherein the Defendant could not then examine any thing on his part.

*Bills of Review what they are, and when to be allowed.*

A Bill of Reveiew is a Bill to examine and reverse a former Decree, and is not admitted at all until the party hath obeyed the former Decree in all things wherein the Court can set him in as good state again as he was, if it fall out such former Decree to be reversed: And the Bill of Review is to consist of new matter not heard before, but happening since the decree, or matter resting upon Record or writing not known before, and not upon new proof or Testimony of men.

*They must consist of new matter.*

*Bills to examine witnesses in* pertuam rei memoriam.

Bills to examine Witnesses in *perpetuam rei memoriam* were utterly disliked by the late Lord Chancellour *Egerton*, for that these Examinations are not to be published but upon Oath, that the Witnesses are dead, and that the Wit-

nesses

nesses being dead before publication, if they have committed perjury, there is no remedy against them; And he did order the party to exhibit his Bill upon the Title, and so to proceed to examination and publication of the Witnesses in ordinary course, saying, that they might go to Law if they would, and take the benefit of these Examinations.

*vest Precedents 190. plit. 48.*

The Defendant hath 8 dayes from the time of the return of the *Subpœna* to put in his Answer, which he must do although it be hard at the end of the Term to take a Copy of the Plaintiffs Bill, and is to put in his Answer thereunto, which he is to do upon Oath; And if he fail to do it by that time (unless in the mean time an Oath be made that he cannot directly answer the Plaintiffs Bill, without sight of some Evidences or conference with some persons that are in the Country above 20. miles distant from *London*) then by the course of the Court he hath respite given him to answer until the 6th. day of the next Term; Or if any Oath be made that the Defendant is 70 years of age or upward, or of such impotency by reason of sickness or other infirmity that he is not able to travel without danger of his life, in such cases a *Dedimus potestat.* is made of course to take their answer in the Country returnable in the beginning of the Term following, or otherwise an Attachment is awarded against the Defendant of course, and no further process as aforesaid.

*What time is given for the Defendants answer.*

*Dedim. potest. in what cases granted.*

*Attachment for default of answer.*

*Inter Brook & Pawlet* an *Affidavit* was made, that the Defendant long before had vowed never to come to *London* any more, and there-

*Dedim. potest. denied by reason of a foolish vow.*

thereupon a *Ded. potest* desired; The Lord Ellesmere said it was a foolish vow, and granted an Attachment against him for his not appearing.

*Answer good to a common intent. 9. E. 4. 41.*

The Defendants answer was held good and sufficient by the Lord *Ellesmere*, if it be good to a common intent.

*Answer must be plain and direct.*

But he must answer things plainly and directly to his knowledge, as also of his own Act, unless it may be a means to make him subject to a forfeiture or action at Law; and his Lordship would say the Stat. of 15. *H.* 6. *cap.* 4. is, that if the Plaintiff make not good the suggestions of his Bill, he shall pay costs; but now Plaintiffs leave their proofs of their suggestions, and are never satisfied with Defendants answers.

*15. H. 6. cap. 4.*

*Costs for insufficient Answers.*

For the first insufficient Answer, the Defendant is to pay to the Plaintiff 20. *sh.* costs, for a second 40. *sh.* and so double to the fourth insufficient answer, and then to be committed and examined upon Interrogatories to be administred unto him by the Plaintiff, touching the point so insufficiently answered.

*Examination upon Interrogatories.*

*No exception to an Answer after a Replication, nisi, &c.*

Answers are not to be excepted unto after a Replication, unless by special Order the Replication be withdrawn, it being unadvisedly put in by some Solicitor.

*After obstinate refusal what may be done.*

The Defendant being committed, and still obstinately refusing to make any direct Answer, the Plaintiff was admitted to the proofs upon the points in the Bill, lest his Witnesses should die; *Jennings contra Sayler M.* 18. *Eliz.*

Of late, Orders have been granted that the Bill

Bill shall be taken *pro Confesso*, if the Defendant lie obstinately in contempt in the Fleet, and after a *Habeas Corpus* in open Court refuseth to answer by a day prefixed to him. *Bill taken pro confesso.*

The Defendant himself is not to be examined here upon Interrogatories, unless it be to discover fraud or practice, or in such case as is above, and this notwithstanding the Plaintiff may also examine Witnesses in the cause, and is not to be excluded thereby; but sometimes by Order.

For without the Defendants assent the Lord would say that he would not order it, but the Plaintiff should make his proofs as well as he could, the Suit being here for *Meum & Tuum*, and not as criminal Causes in the Star-Chamber, and the Defendant hath been examined, and the party concluded by the Examination.

Barons of the Realm have of late time answered upon Oath, though of former times they answered sometime upon their Honour, sometimes upon Oath; And the Lord Chancellour *Egerton* ordered the Lady *Wharton* at the Suit of *Willoughby* to answer upon Oath, saying, That upon their Honours did not binde their Conscience no more then if they should be permitted to give Evidence upon their Honours to a Jury at Law, if a Jury find contrary to such their Evidence an attaint would not lie against them, *Barons to answer upon Oath. Otherwise not in Answers. Lib. 8. 40.*

An Answer by way of Disclaimer is, where the Defendant upon Oath denies and disclaims to claim or have any Title to the thing in demand by the Plaintiffs Bill, in which cause *Answer by way of Disclaimer.*

cause if it appear the Bill to have been exhibited for vexation only, the Defendant hath had his costs upon such his Disclaimer: But if the Plaintiff had some probable cause of fear, which gave him Ground to exhibe his Bill, he may (if he please) pray a Decree against the Defendant, and all claiming under him since the Bill exhibited, and upon such a Disclaimer the Defendant is to pay no costs.

*A Defendant that disclaims may be used as a Witness.*

If one be named in a Bill amongst other material Defendants, and doth thereupon for his part disclaim; He may then upon motion be used as a Witness in the Cause, otherwise his name might be inserted without Cause, as against him only, of purpose to take away his Testimony from the other Defendants.

*A Plea in Bar must be upon Oath.*

An Answer by way of Plea in Bar, is where the Defendant plead some forreign matter in Bar of the Plaintiffs Suit, which matter must be pleaded upon Oath, unless it be a matter of Record in this Court, an Outlawry, which must be pleaded *sub pede sigilli*, or Excommunication which also may be pleaded under the Seal of the Court.

*Demurrer.*

An Answer by way of Demurrer is where the Plaintiffs Bill is without any forreign matter alledged by the Defendant insufficient in it self, where the Defendant by way of Demurrer doth but only point out and shew that matter so alledged by the Plaintiff in his Bill; and how the matter is not sufficient to entitle the Court to hold Plea of it, or to charge the Defendant to give an Answer, and that therefore he doth Demur in Law, and demand the Judgement of the Court, whether he shall be compelled

compelled to make any further Answer to such a Bill.

A Demurrer by course of the Court is to be put in here by the Defendant in proper person, and not by his Counsel, Attorney or Solicitor in his absence, or else an Attachment lies of course against him.

*A Demurrer to be put in proper person otherwise nay other Orders.*

A Demurrer doth always admit all the matter in fact in the Plaintiffs Bill suggested to be true, but yet he is not bound to answer the same matter, &c.

Therefore the Lord Egerton, where the Defendant put in a Demurrer, where the matter of the Bill was sufficient to entitle the Court to hold Plea of it, and also to charge the Defendant to make answer thereunto; and the Defendant obstinately standing upon his Demurrer, and refusing to answer, saying in open Court, *Nescit vox missa reverti*, did thereupon decreee the matter of the Plaintiffs Bill against the Defendant, which by his Demurrer was so confessed, *Wood contra Goth. Doctor.*

*A Demurrer being overruled, further Answer must be made, or else a Decree for the Plaintiff.*

*Na per Cur' &c. lou un port Bill en le Chancery, & le De Demurre en lee lour le ten sufficienc. dill bill, et per advice del Court le Bille est agardeniens sufficient, en c' Case le Def. n'aura damages, car lour done damages est lou le suggestion c' est trove verity on nient verity et en tiel Case le verity del matter best per title.*

*No Damages upon a Demurrer and why.*

7. E. 4. 14. b.
17. R. [illegible]

Replications,

## Replications.

*Replication in what time to be put in.*

A Replication is to be put in by the Plaintiff to the Answer of the Defendant that Term the Answer comes in, or in the Term following peremptorily, or else the cause is of course dismissed *ipso facto* with costs, and the next Term after the Answer is put in the Defendant may at any time give the Plaintiff a day to reply, or else to pay Costs.

*Dismission for want of Replication.*

*Replication must not be of any new matter.*

A Replication is to be an Affirmation or Averment by the Plaintiff of his Bill, and confessing, or avoiding, or traversing and denying of the Defendants Answer, and ought not to be a departure from his Bill, and contriving new matter, for the Plaintiff is to have his Decree *Secundum formam Petitionis.*

## Rejoynder.

*Rejoynder within what time to be put in.*

After the Plaintiff hath put in his Replication, and the Defendant being served with a Subpæna to rejoyn, if after the day of appearance he doth not put in his Rejoynder by that day sevennight, or not appearing, and Oath made that the Defendant was so served, the Plaintiff may call for Commissioners names of the Defendants Attorney in the Term time to go to Commissioners to examine Witnesses, and may go *ex parte*, if the Defendant be not the

then ready to joyn in Commiſſion with him, and to give him names.

Three Defendants, a Subpæna to rejoyn is ſerved upon two of them, if the Plaintiff go to Commiſſioners thereupon, he ſhall not conclude the party that was not ſerved by theſe Examinations, he not being party thereto. *Subpæna* ad rejung. *muſt be ſerved upon all the Defendants*, &c.

After a perfect Anſwer put in by the Defendant to the Plaintiffs Bill (but not before) Witneſſes may of courſe be examined in Court on both parts; but if an inſufficient Anſwer be put in, and then Witneſſes examined, and then the Anſwer over-ruled, and a better put in, ſuch Examinations were repreſſed by the Lord *Egerton*, and not allowed of at the hearing 44. *Eliz. inter* the Maſter of St. *Katherines* and *Linſey*, and Witneſſes are not to be examined in Court without notice of the names and dwelling places of ſuch Witneſſes firſt given to the adverſe Party or his Attorney. *No Teſtimony of Witneſſes allowed before ſufficient anſwer be put in.*

But before a Commiſſion for Examination of Witneſſes goes forth, the Plaintiff by ordinary courſe is to reply and ſerve the Defendant with a Subpæna for to rejoyn and joyn in Commiſſions, unleſs the Defendant joyn *gratis*, or go to Commiſſions by aſſent. *Replication of courſe before a Commiſſion to examine witneſſes.*

But if the Commiſſion go out *ex parte*, there being then no aſſent, the Interrogatories are alwayes to be included in the Commiſſion. *The Plaintiff hath alwayes the carriage of the Commiſſions until default.*

If the Plaintiff (who hath alwayes of courſe the priviledge of carrying the firſt Commiſſions, and ſo until ſome default be in him) do commit any fault in the Execution of his Commiſſions, then the Defendant (if he will) hath afterwards the carriage of the Commiſſions.

And

*Costs for default of appearance of his Commissioners that hath the carriage of the Commiss.*

And if the Plaintiff give warning to the Defendant of the day and place for the Execution of the Commissions, and the Defendant bring his Commissions, and Witnesses upon such warning giving him, and the Plaintiff then fail in producing his Commissioners, the Defendant may move, and have his costs for the Plaintiffs such default.

*Commissioners not to judge what Interr. are pertinent, and what not.*

Commissioners ought not to judge what Interrog. are pertinent, and what not, but are to examine upon the Inter. as they find them according to their Commission. *Baker contra Cole, Hill. 9. Jac.* the Commissions was ordered to be renewed, and new Commissioners named, the former being rejected for so doing.

## *Publication, the course thereof.*

*Publication how it is to be had.*

After a Subpœna served to rejoyn, if there be no Commissions taken for the Plaintiff, he (upon Oath made of the serving of the Procels after the return past) may give ordinary Rules for Publication; and the Defendant putting in his Rejoynder (though *gratis*) may do the like, which Rules are first two ordinary Rules, *viz.* two Rules given in Term time to the adverse party to produce his Witnesses, and those being out, another Rule is then given, called the peremptory Rule to examine his Witnesses, at which Rule given, the other party may have a course to have a Commission to examine his Witnesses, if he desire it; if he desire not, then a Commission upon

that Rule, another is given, viz. That day ſevennight to ſhew cauſe why publication ſhould not be granted, and after that Rule once given, the party muſt ſhew his Cauſe to the Court, or elſe publication paſſeth when the Rule is out.

*Either party may give Rules for publication, unleſs there be ſpecial order to the contrary.*

And this is the courſe to give ſuch ordinary Rules where Examinations in Court, or *ex parte* by Commiſſions, or that no Witneſſes are examined at all by either of the parties to conclude the adverſe party for examining of Witneſſes at all.

But if Commiſſions be once joyned by the parties and executed, then upon return of that Commiſſions, either party may give that day ſevennight for publication, and then the other publication paſſeth, unleſs the other party get ſome ſpecial order in the mean time to ſtay publication that he may have yet further time to examine ſome more Witneſſes which he hath yet to examine.

*No examination of Witneſſes after publication unleſs in ſpecial Caſes.*

After publication once paſſed, the parties are not to examine any more Witneſſes, unleſs ſometime upon Oath, that he, nor any for him hath ſeen or doth know any thing of the Examination whereof the Rule of publication is only paſſed, and ſome good reaſon be alſo alledged why the party did before ſo neglect his time to examine them, a further liberty may be by ſpecial order given him for a ſhort time to examine them peremptorily, and ſet down the names of his Witneſſes, they being not in the former Depoſitions, &c.

*After publication on a Depoſition Cambr. miſtaken cannot be amended.*

After publication the Court will not ſuffer a Depoſition miſtaken to be amended, *contra Pope, M. 39. & 40. Eliz.*

## *Hearings and Proceedings.*

*A day for hearing may be procured by either party.*

After publication past, then either Plaintiff or Defendant (that desires it) may procure the cause to be set down to be heard, which is usually done by some of the same Clerks who knows best how the case stands in Court.

*The manner of hearings opening of the Bill and answers.*

Hearings are in this manner: Both parties appearing, one of the Counsel for the Plaintiff openeth the Bill, and one for the Defendant the Answer, then commonly one of the most learned for the Plaintiff doth shortly set out the Questions that do arise in the case, and thereupon they descend to read their proofs of such points as be controverted.

*A Witness deposing contrariety to be rejected. 16. E. 4, 9. Plit. 10.*

If a Witness depose falsly or manifest contrarieties in any material part, he is wholly rejected, and the parties put to read others.

*Depositions between other parties to be rejected, and so in other Courts.*

Depositions, though in the same Case, between other parties, are not admitted to be read, unless by special order. So of Depositions in other Courts, but by order, and a day given to the other party to shew cause why not, and none shown, they may, and then also not such as were examined there after publication of the Witnesses examined in the Cause in question.

*Deposition between the same parties in a former cause allowed.*

Depositions between the same parties in a former Cause are allowed to be read, but it must be by Order, also the adverse party may prepare to use the benefit of those Depositions also on his part.

No

No Witneſſes *viva voce* are admitted at the hearing of the Cauſe.

*No Witneſſes viva voce admitted*

No Letters or Notes, not proved true by ſome Depoſition taken before publication, are to be read at the hearing.

*Letters or Notes ought to be proved by Depoſition.*

One Witneſs is not twice to be examined by the ſame party in the ſame Cauſe, not to be allowed of at the hearing.

*One Witneſs not to be examined twice by the ſame party.*

If the parties joyn in Commiſſion, and one of them exhibits his Interrogatories (as by courſe he ought) and the other hath a Commiſſioner preſent at the examination of the Commiſſions to ſee what is done on that part, but exhibiteth then no Interrogatory on his part at all; He is not after his Commiſſioners have ſeen what is examined, then to frame Interrogatories for Examination of his Witneſſes, either in Court, or by Commiſſion, for the danger of Subornation or Perjury; The Lord *Egerton* in the Caſe of *Beryman cont. Beryman* quaſhed Examinations taken in Court upon ſuch Interrogatories when the Cauſe came to hearing, the party having examined no other Witneſſes.

*No Interrogatory to be framed after one party be examined.*

Neither may the parties (if once they joyn in Commiſſion, and examine Witneſſes thereupon) afterwards adde unto, or alter thoſe Interrogatories put in.

*Interrogatories not to be altered.*

If the Defendant appear not nor any Counſel for him at the hearing of the Cauſe, then after the Bill opened, and an Affidavit made, that the Defendant was ſerved with Proceſs *ad audiendum judicium*, the courſe is to go on with the hearing notwithſtanding the Defendants abſence this manner, *viz.* to hear the

*The manner of hearing a cauſe where the Defendant appears not.*

Defendants Answer, and that which he denies and doth not directly confess by his Answer, the Plaintiffs Councel are to read proofs for him, and then the matter falling out apparently for the Plaintiff, the Court doth sometimes presently decree the same, but commonly it is decreed, unless the Defendant that made such default shall shew good cause to the contrary, the first day of the next Term.

*Hearing upon Bill and Answer.*

If the Plaintiff go to hearing with the Defendant upon Bill and Answer only, as (if he supposeth the Defendant hath confessed sufficient matter for him in his Answer) he may, then the Bill being opened as aforesaid, the Answer of the Defendant is wholly to be read, which must be admitted true in every part thereof, whereupon if the Court find cause by the Defendants confession in his Answer, the matter in the Plaintiffs Bill may be decreed for him; But if the Plaintiff must give any other thing in Evidence then the Defendants own confession in his Answer, his cause is not ready for hearing in this kind, but he must go on in ordinary course to reply and examine Witnesses.

*Confession of one Defendant binds not the other.*

If there be two Defendants, and the one of them confess sufficient matter in his Answer for the Plaintiff, it shall bind himself, but it is no proof to be believed to binde his fellow Defendant.

*If the Plaintiff procures a day of hearing, and attends not, he is to be dismissed.*

If the Plaintiff procures the cause to be set down for hearing, and then serves no process upon the Defendant, if the Defendant attend and the Plaintiff is not ready, the Defendant hath sometimes been dismissed, for the Plaintiff

tiff is intended to be alwayes ready and present *in Curia*; And the Defendant finding the Cause in the Book of Hearings, because he is to be bound by process left at his house (of which perhaps he may have no notice) is enforced for his safety to appear, but if the cause were set down by the Defendant himself, and no process served it is otherwise.

If there be cross Bills exhibited by each of the parties for the same cause, and both Suits be published and ready for hearing, the parties because that serves not, process shall not be heard, unless the other party also desire it.

*Cross Bills ready for hearing, process must be served each upon other.*

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## *Decrees.*

A Decree is a final Sentence or Order of the Court, pronounced upon the hearing and understanding of the Cause, which Decree being drawn up by the pleadings, and the final order so pronounced by one of the six Clerks, and signed by the Lord Chancellour, *&c.* and inrolled of Record, may not be altered upon any motion or Order, but the party is then put to his Bill of Review if he have good cause; which but upon good cause is not admitted, it being both inconvenient for the dignity of the Court, as also for the parties, that Suits should find no end; and such Bills of Review are not admitted but by special order, and then also upon good Bond to pay Costs and Damages as the Court shall think fit, if that Suit also pass against the Plaintiff.

*A Decree, quid.*

*Bill of Review.*

*Decrees alterable before Inrolment.*

If an Order be made for a Decree which is entred with the Regiſter only as an Order, and never drawn up and ſigned by the Lord Chancellour and inrolled as aboveſaid; this is ſometimes altered again by another Order, it being as yet but an Interlocutory Order and not finall, until it be paſſed and inrolled.

*No croſs Bill after Publication.*

If a croſs Bill be put in by the Defendant in any Cauſe, it ſhould be before publication, but not after publication in the firſt Cauſe, unleſs he will go to hearing upon his firſt Bill upon thoſe depoſitions ſo already publiſhed, and this for the danger of perjury that might enſue if the parties again after publication ſhall examine Witneſſes in the ſame Cauſe anew.

*Decrees ſometimes for the Defendant.*

Decrees are ſometimes made for the Defendant upon hearing of the Cauſe, the Equity thereof upon the proofs falling upon him, which is much better then to admit a croſs Bill to be put in by the Defendant after publication, and that the parties ſhall thereupon proceed to new proofs.

*What perſons are bound by a Decree and what not.*

No perſon that claims *bona fide* before the Bill exhibited, and who is made no party to the Suit, is to be bound by a Decree, but ſuch as be parties or claim under him *pendente lite* only.

*A Decree binds the perſon, not the Intereſt.*

Although a Decree in Chancery bind not the Intereſt but the Perſon, yet the Perſon may by Decree be ordered to aſſure the Intereſt, and his Perſon lye by it until he perform it. As if a Decree be made that an Obligation be brought into the Court to be cancelled, the Obligation is not thereby made void in Law, neither can the party plead that Decree in Bar

to an Action of Debt brought upon that Obligation at Law, but the person of the Defendant may be committed here until he brings in the Bond to be cancelled and made void according to the Decree.

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## *Decrees upon the Statutes of charitable Uses.*

A Decree made by Commissioners for charitable Uses upon the Statute being to stand until it be reversed by the Lord Chancellour, such Decrees have not been admitted to be impeached by a tedious Suit by a Bill of Review, nor by Complaint in ordinary course, both for the avoiding of charges in a tedious Suit, and also for the delay of performance of such charitable Uses; but some short expeditions by way of Petition only containing the matter fundamental, which have been admitted to be deliveted to the Lord Chancellour, to the particulars whereof, the other parties were by his Lordship ordered to be set down summarily in writing their Answers, and thereupon the Lord Chancellour upon the perusal of the Commission decreed, and of the exceptions & answers did give a final Order and Decree in the Cause. *How avoided or reversed.*

*M. 90. Jac.* Purchasers ordered to be examined of the notice of the chatitable Uses, the Lord Chancellour saying *Notum & notorium* must be at the perils of the Purchasers, but *notum & privatum* must be proved. *Notice in Purchasers.*

The Lord Chancellour would say that he would not charge the Decree of the Commissioners in such case in any nice points in Law; the words of the Statute being (*inter al.*) limited and appointed, and the intent and meaning of the Donors being by the Statute intended to be established.

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## *The judicial process and proceeding for Execution of Decrees.*

*Execution of the Decree by Writ.*

First an Execution of the Decree by Writ, which Writ recites the Decree, and commands the party to perform the same for so much as concerns him to perform.

*Serving of the Writ.*

The Writ is served either by delivering the party the process under Seal, or a Copy thereof unto him, or by leaving the Writ at the parties house or place of abode, or common resort, under Seal, if he meet not with his person.

*Affidavit of non performance of the Decree.*

And thereupon, and upon Affidavit made of such serving, and that he hath not performed the Decree, to take out the ordinary process of Attachment, Proclamation and Commissions of Rebellion, which are of course made out against him, as upon a *Subpœna ad comparen.*

*Injunction for Possession.*

And after all the process of the Court is spent, if the Decree be for Land, an Injunction upon motion will be granted against him to deliver the possessions of the Land so Decreed to the Plaintiff, and if he be obstinate, then a

*Commiss. to the Sheriff for Possession.*

Commission to the Sheriff to put in and keep the Plaintiff in possession.

And if the Defendant in person come not in upon

upon all the process of Contempt, but still hide himself, a special Order is awarded against his person to apprehend and bring him in. *Order to apprehend a person in Contempt.*

And being so brought in and committed to the Prison of the Fleet he is not from thence to be delivered, and he obey so much of the Decree as is presently to be performed, and put in good Bond for the performance of things executory, when the time of their performance shall come, and also pay the Plaintiff his Costs in prosecution of such his Contempt, *Imprisonment until performance of the Decree.*

And the party still continuing in the Fleet in such his obstinacy, to enjoyn him by a day given him to perform the Decree, which he upon notice refusing to do, to set a Fine upon his head in open Court for such his Contempt, and to enter it, and to award process out of the petty Bag to the Sheriff, where he hath any estate to levy it, and to pay it into the Hamper; for in the latter end of the Lord *Ellesmore* the Fines being estreated into the Exchequer were too much disputed there by some Lawyers, as it was then thought. *Party in Contempt fined and levied by the Sheriff, by process out of the petty Bag.*

If the Defendant (so being committed) will continue still wilfully in Prison, and yet not perform the Decree, then he may be committed close prisoner until he shall perform: And in *Webb* and *Braithwaits* Case, *M.* 9. *Jac.* his wife and children were restrained to come at him, he wilfully lying in the Fleet upon such Contempt. *Close imprisonment upon wilful contempt.*

And in some cases of such obstinacy, a Sequestration hath been granted; as where a Rent out of Land hath been decreed, and the parties obstinately refuse to pay the Rent and *Sequestration of Lands for the Rents issuing out of them.*

and Arrerages, the Lands out of which the Rent issueth have been Sequestred, that out of the profit thereof the Decree may be satisfied.

*Sequestration of for purchase money unpaid.*

So where a man gets an assurance of Land for money to be paid by him, and having his assurance, would not pay the Purchase-money, but being decreed to pay it, lies obstinately in Prison, and holds the Possession of the Land so sold and not paid for: For that the Land was Sequestred *quousque*, *inter Rumny* and *Hall.* 43. *Eliz.* So *inter Mon* and *Bicham* 90. *Jac.* the Defendant being trusted by the Plaintiffs Father at his death, to receive the profits and Rents of his Lands to the benefit of his Son within age, to be accompted for and paid to his Son at full age, and it being proved that the Defendant had received much money, and being decreed to pay the money so received to the Plaintiff and obstinately (being in Prison) refusing to pay it, a Sequestration was granted of his Lands purchased with that money *quousque*, &c.

*Of what Lands a Sequestration may not be.*

But Sequestrations are not used to be granted of Lands that had no relation to the thing in Demand, *Orompt. Jurisd.* 63.

*Dismission inrolled not to be altered.*

A Dismission also is a final Sentence of the Court, as is a Decree, and if a Dismission be upon a full hearing Ordered and Decreed, and so then drawn up signed and inrolled, as is a Decree; it may not be altered by any motion or order after for retaining thereof, nor any new Bill exhibited, but upon such new matter as aforesaid in Decrees, and by such special Order.

But if the Dismission were only for want of pro-

prosecution, and not upon the body of the matter, then sometimes upon motion and excuse of slackness, the Plaintiff is by special order permitted to exhibit a new Bill or to retain the former and to go on with the Cause, and then some short time limited peremptorily for the effectual prosecution thereof to the hearing.

*Dismission for want of prosecution not peremptory.*

If the Plaintiff hanging his Suit here, go to Law for the same Cause for which he hath before exhibited his Bill here, he is upon motion to be dismissed with good Costs, but if he sued first at Law, and exhibited his Bill here for the same Cause after, an Election hath been used either to go on here and stay the Suit at Law, or to go at Law and to be dismissed here; And if he go on here he is to stay his Suit at Law, and not double to vex the Defendant.

*Dismission, if the Plaintiff prosecute the same Suit at Law.*

If the Plaintiff enter into the Lands in question, hanging the Suit here, because he makes himself his own Judge, he hath been dismissed hence, *M 90 Fac. inter Illis* and *Moris Mill.* It was ordered that for so much of the Land in question as he had in Possession before his Bill exhibited, his Suit should still go on here, but for so much as he had entred into hanging his Suit here, he should be dismissed.

*Dismission for entry into Lands hanging the Suit.*

A Dismismission is not to be moved for by the Defendant upon the matter of the Plaintiffs Bill before a Demurrer, Plea or Answer be put in unto it by him.

*Dismission not to be moved for by the Defendant before Demurrer, Plea or Answer.*

In all Contempts committed against process of the Court, either in disobeying the original process of the Court in Causes between party and

and party, viz. in not appearing upon the Bill ad Sectam, or in disobeying the Writ of execution of an Order or Decree of Court, whereupon process of contempt issues, as Attachment, Proclamation and Commissions of Rebellion, &c. If the parties come not in upon any of the said compulsary process, he is to be examined upon Interrogatories to be put in by the adverse party touching such his said contempt before he be committed to Prison, wherein if he excuseth himself upon his Examinations, the party at whose Suit he is attached, is to pay him costs to be taxed by a Master of the Court, unless the Plaintiff thereupon require a Commission or time to prove the contempt, and do it by the second return of the Term following.

*Examination upon Interrogatories touching Contempts.*

If the Plaintiff take a Commission to prove the contempt, the course is that the Contemners shall put in no Interrogatory nor examine Witnesses, but the Plaintiff, neither is the Contemner to name any more but one Commissioner in such Commission, who may be present at the examination of such Commission for the Defendant to see direct carriage in the examinations only, which course hath been such in hatred of Contemners: And if the Plaintiff then fail in proof of the contempt, then the Defendant is to be discharged of the contempt, and to have good costs. And this is the course of the Court between party and party. But if any offence or contempt be committed against the Court, or against the great Seal by word or deed upon serving the process, then upon Affidavit there made, the party is

*Contempts.*

*Contempts against the Court and great Seal.*

there

there ſnapped up and committed immediately without any examination of him at all; for better it were (if the Affidavit ſhould prove untrue) to ſuffer that miſchief to one particular perſon, then the inconvenience that ſuch an high Court of Juſtice (as is the Chancery) or proceſs or authority thereof ſhould be condemned: And if the Affidavit-man hath made a falſe Oath, the party committed is left to take his remedy againſt him as he may; yet where there hath appeared ſuſpition in the Oath, and the worth of the party againſt whom ſuch Affidavit is made, hath been known to the Court, ſometimes an examination hath been known, and by order permitted, but that very ſeldome.

*No averment againſt a reſcue returned by the Sheriff.*

Upon the return of reſcue by the Sheriff upon an Attachment, and ſo alſo by Commiſſioners upon a Commiſſion of Rebellion, the party is likewiſe preſently to be committed for ſuch his contempt, for no averment lies againſt ſuch Return.

*Contemners not to be heard in Court till their contempt be diſcharged.*

The Lord Chancellour *Egerton* would ſay, that perſons in contempt are by courſe of the Court not to be heard in that or any other cauſe, until they have diſcharged their contempt.

*Departure after proceſs of contempt, imprisonment ipſo facto.*

If the party appear upon an Attachment or other proceſs of contempt, and depart without licenſe of the Court, he is to ſtand committed *ipſo facto*, *M.* 10. *Jac. Haſelwood contra Clifton*, the Defendant ordered to anſwer within a week, or an Attachment againſt him for his contempt, and in a Caſe then between the Duke of *Lenox* and the Lord *Clifton*, the Lord Chancel-

*Noblemen to be committed for Contempts.*

Chancellour *Egerton* said, if Noblemen will commit Contempts, they are to be Committed.

## *Motions and Orders Interlocutory, hanging.*

*Motions.*

MOtions more then needful, and not tending to the end of the Cause, are many times the cause of long and tedious Suits in Chancery: Some have conceived that there need but one motion in a Cause *viz.* for an Injunction for the quiet possession as at the time of the Bill exhibited, and for staying of Suits at the Common Law, in the mean time till the Cause be determined here; And that other motions for the most part might well attend the hearing of the Cause, which would be soon ready for the hearing, if Causes might go on in ordinary course by pleadings and proofs without being crossed by motions, one motion begetting many, whereby the Court is much troubled, and the Suitors delayed, desiring an end of their Suits, and not *movere* and *promovere*. But apparent it is that such motions only as tend to the end of the Cause, and not to put it out of the way, are good for the suitors, and ease to the Court.

*Councel in motions misinforming the Court.*

The Councel that misinforms the Court in his motions, or moves not informing the former order in the Cause, hath had his order so misgotten, thereby vacated, and Costs awarded to be paid by himself or his Client, by himself if it lay in him to have informed himself better,

ter, or else by the Client who misinformed his Councel, and while this course was used little was there of references to consider of the truth of such Informations; The Councellor in respect of his credit, and the Client for fear of such costs being then careful not to misinform in any thing which they were sure to hear of again by motion of the adverse party to the next motionday.

*Injunctions upon Contempt.*

Injunctions after Answer are not commonly granted but upon matter confessed or proved or manifestly appearing by some Deed then shewed in Court; but if the Defendant sits an Attachment, and comes not in to answer, then they have been usually granted till he appear and make a perfect answer; So if the Defendant procure a *Ded. pot.* and having that favour will proceed at Law in the mean time till the Defendant put in a better Answer; So if the Defendant delay his Answer by making Oath that he cannot answer without sight of evidence, or conferring with some person in the Country, whereby he hath a respite to answer till the next Term, and to proceed at Law in the mean time.

*Injunctions upon stay of answer.*

*Injunctions for the stay of felling of Timber.*

Injunctions for the stay of felling of Woods especially of Timber, it being *pro bono publico*, and no hurt to the party interessed to let them grow a little longer, whereby the encrease is to him that hath right, have been usually granted.

*Churches and Hospitals not fairly dealt with in the Country.*

*Warwick* Hospital *contra Feilding.* M. 9. *Jac.* the Lord Chancellour *Ellesmere* said, that Churches and Hospitals lightly go down by trials in the Country, therefore staid by Injunction.

In-

*Injunction upon 2 Ed. 6. for Tythes.*

Injunction have been ordinarily granted by the Lord *Ellesmere* to stay all Suits upon the Stat. of 2 *Ed. 6. cap.* 13. to recover treble damages for not setting out of Tythes, but permitting them how they will otherwise for their Tythes.

*Injunction for stay of execution of judgement upon consent.*

Injunctions have been usually granted by him where judgement hath been entred by assent (a course lately frequent for security of money) to stay Execution of such Judgement.

*Injunctions where 8. actions are for one thing.*

*Hill 9. Jac, Duncumbe contra Randall*, 8. Actions at Law for one cause; Lord *Egerton*, this is Barretry; stay them all by Injunction.

*Injunction pray for that the Plaintiff had other security, and denied.*

*Home emant Surety pre aut' & nvoit biens en ses mains a saver luy harmlesse, & auxy prist' obligacon al & intent quel il mist en suit, & le Defendant Ministre le matter en Chancery & pryа injunction, mes suit denye 16 E. 4. 9. plit.* 10.

*Injunction upon trial by Ejectione firme.*

Lord Chancellour *Egerton*, *Hill. 9. Jac. Int. Hollard* and *Bullel* in granting an Injunction to stay the trial in an *Ejectione firma*, called them pickpurse Actions in which the parties did but outvye one another, and he that had the last Angel prevailed, and said that an *Ejectione firma* before *Edw.* 1. time was not used against a Stranger, but only against the Lessor, and in trespass where damages only are to be recovered, the Plaintiff there may be driven to make a Title, but in this not.

*Injunction to be dissolved for not prosecuting.*

If the Plaintiff having once gotten an Injunction, do after foreshow the prosecution of his cause, and to proceed therein with effect, his Injunction hath upon motion been dissol-

ved,

ved, If upon a day given him he hath not shewed good cause of such his delay.

*Motions concerning Commissions, examination of Witnesses.*

Motions are many times made concerning the well going forth and execution of Commissions to take Answers and examine Witnesses, and for such other matters of course, as for slackness in prosecution, &c. which have been commonly referred to four of the six Clerks not toward the cause, who hearing their two fellows retained in the cause, and seeing their backs did easily resolve the same without any delay or charge at all to the subject.

*Orders never pass against a Decree, but to confirm it.*

Orders after Decree passed are never granted to retreat from the Decree, but only to go on further and effect the Decree, as in cases of Sequestration aforesaid, or after process of the Court spent; A Commission for possession of the Land decreed, and the like *in supra*.

*References.*

References to report in any cause are a great hindrance to the proceedings in the cause, although in some causes they may be necessary for the ease of the Court in expediting of causes, and to make the matter easier and readier against the hearing thereof, namely, a reference for the casting up of Accounts, perusal of Court-Rolls and Writings, &c. things which otherwise might hinder and be tedious to the Court and proceedings in more important matters.

*Demurrer upon an insufficient answer referred.*

A short point of a Demurrer or of an insufficient Answer being especially opened might be soon resolved by the present opinion and order of the Court, it requiring no more time in opening and present deciding, then in opening

and referring the same, for without opening the points wherein the defects are, no answer in effect shall be refered at all.

*References and reports thereupon unnecessary, and tending to delay.*

And when a report upon such reference comes in peradventure exceptions may be taken to the report and thereby cause a new reference; all which ariseth to the great delay of the cause, and it is conceived if this course were held in this to have the point of insufficiency openly moved in Court, the Councel which sometimes demurre only to win time, and sometimes to put in frivolous answers would be more wary, and dare not so openly affront the Court, if the Court it self would judge of it: and now many times motions are made for referring an insufficient answer, which he that moves never knew whether it be insufficient are not.

*References of the Bill, answer and state of the cause probibited, and why.*

References of the Bill, Answer, and the state of the cause (which hath been by the Lord *Ellesmore* divers times prohibited, and yet of late hath been used again) hath been a great scandal to the Justice of the Court, and very chargeable to the Suitors, and most commonly *cum in circuitu ambulaverunt*, the Plaintiff is fain to reply, and so to go on again in the ordinary and true course. And so in a judicial hearing in open Court, after he hath been by such references for a large time delayed and perplexed within these 9. or 10 years last past, Justice being done with expedition to the liking of all Suitors, there were very few references to report in any cause, unless for matter of account as *supra*. That the parties by mutual assent sometimes desired such reference to Merchants con-

concerning the Trade of merchandizing; but if either of the parties Plaintiff or Defendant had in any cause dissented, and desired the ordinary proceedings and Justice of the Court, of the business then in reference.

Costs of Suit are sometimes given to the Defendant, when the cause is dismissed hence, if it appear he was vexed by the Plaintiff, and the costs are commonly very moderate, namely 20. sh or 40. sh. But if the Plaintiff had *probabilem causam litigandi*, then no costs but a dismission without costs. *When the Defendant shall have costs, and when not.*

Damages are also sometimes given to the Plaintiff, when the cause is decreed for him, consideration being there in had before, of *lucrum cessans & damnum emergens*. No damages where the contract is usurious. *Where the Plaintiff shall have damages.*

*Pasc.* 14. *Eliz.* upon a Writ of Error brought into the Kings Bench upon a Judgement given in the Common Pleas in an *Audita querela* concerning an Execution upon a Statute-Merchant acknowledged at *Preston* in *Amesdernes* in *Com. Lancast.* which was certified into the Chancery, the Kings Bench directed a special *Certiorari* to the then Lord Keeper *Egerton* with a *Mandamus quod scrutetis Rotul. Cancel.* to certifie *quod inde venires*; But the Lord Keeper to refused to certifie, saying, they had no such Warrant to command the Certificate of any Record out of the Chancery, only acknowledged that the Master of the Rolls hath sometimes brought in his hand some Records to inform them of the Kings Bench, *Lamberts Reports*. *Special Certiorari with a Mandamus to the Lord Keeper, who refused to certifie or bring in the Record out of the Chancery.*

The Chancery hath a Soveraign power above *Prerogative of the Chancery.*

*Bills directed to the King in the vacancy of the Lord Keeper, and how.*

above all other Courts of Equity, it being a Court of the distribution of the Kings own conscience, and Bills are exhibited here in the vacancy of the Lord Keeper or Chancellour to his own Royal Person, *viz.* To the Kings most excellent Majesty in his Highness Court of Chancery.

*Justices of other Courts by what Authority they sit.*

The Justices of the other Courts at *Westminster*, have their Authority by Writ or Patent under the Great Seal of *England*, being the Seal of the Chancery which is committed to the Lord Chancellour or Keeper by the King, together with the distribution of his own conscience.

*Teste of the Chancery Writ Teste meipso.*

The Teste of the Chancery Writ is *Teste meipso*, of other Courts the chief Justice of the Court.

*Chancery always open.*

The Chancery is ever open, and is not adjourned by the adjournments of the Term, *Br. Jurisd.* 7. 44. *E.* 3.

*Errors in Chancery where reversed.*

Error here is reversable in Parliament only, 37 *H.* 6. 16. *Ashton, Denby* and *Choke*, or by special Commissions from the King.

*Chancery in the Cinqueports.*

The Cinqueports have a Chancery, as the by Prescription and Suits, have been maintained here by resolution against them there, *Hill.* 53 *Eliz.* the Cinqueports priviledge was over-ruled here; *Inter Shelverden & Godfrey & alios. M.* 38. *Eliz. Inter Cheynel & Godfrey* upon a Report of Dr. *Carew* and Mr. *Lambert* the Cinqueports priviledge over-ruled here.

*Chancery in the Universities.*

The Universities of *Oxford* and *Cambridge* have Chanceries by Charter, which sometimes have been admitted here sometimes not, as it pleased

pleased the Lord Chancellour; *Beard* and *Mosl cont. Dr. Kettel, Oxford* priviledge pleaded and over-ruled, and the Dr ordered to answer here with 20. sh. costs, *Hil. 9. Jac.*

Courts established in the North parts, and in the Marches of *Wales*, have jurisdiction of equity, but when they have enjoyned some not to sue here, they have been checked for it, *inter Rutland Comit. & Joans M* 10 *Jac.* one committed by the Lord *Ellesmore* for serving of an Injunction out of the Court of Wards upon the Plaintiff here to stay him. *Chancery Courts in the North and Wales.*

39. *Eliz. inter Carmond & Mordex*, the Court of Requests not allowed priviledge here.

*Inter Grosham & Stone, M. 9 Jac.* Stone pleaded priviledge of the Exchequer, the Chancellour said, no Exchequer man is priviledged against the Chancery, nor the Lord *Bacon* himself, except the matter concern the King, and said, that if the Defendant did endeavour to get an Injunction (as was informed) to stop this Court, he would commit him, and said, he would know those Lawyers that occupy their wits to justle Jurisdictions of Courts together. *No Court or person priviledged against the Chancery.*

*Hartop cont. Hartop M.* 37. *Eliz.* An Exchequer Injunction disallowed, and the party that procured it sent for by a Pursevant, and committed. *Injunction out of the Exchequer disallowed.*

The Jurisdiction of the County of *Chester*, over-ruled here when either of the parties dwell here, for their circumscribed and limited Jurisdiction cannot do Justice in such cases, having no means to bring in the party, *Egerton cont. Kelly & al. H.* 11. *Jac.* *Jurisdiction of Chester.*

*Trin. 5. Eliz. 6. Register Book fol. 78. Presland verſ. Sugar & Uxor.* The Suit being there for a capital Meſſ. and Lands in S. in Com. *Cheſter*, A Sequeſtration was granted till the Cauſe determined here upon the Defendants ſetting out a Commiſſion of Rebellion for not appearing here.

*Juriſdiction of the Dutchy.*

*M. 9. Jac. Tildiſley* moved for the juriſdiction of the Dutchy, but the Defendant not having pleaded that it was the Dutchy Land in his Anſwer was not permitted to ſpeak now at all of juriſdiction.

*Supream power of Chancery.*

So the High Court of Chancery being the ſupream Court, in which the Lord Chancellour judgeth as by the Kings own Conſcience no reaſon that any ſhall be reſtrained to ſue for Equity which cannot be ſo delegated, but that there remains ſtill a ſupream power therein in the King.

*Note*

*The priviledge of Defendants and Witneſſes in Chancery eundo redeundo & morando.*

All Defendants in Chancery and Witneſſes brought up by proceſs to be examined, are priviledged *eundo redeundo & morando*, for their neceſſary attendance here, and if any be arreſted they are to be delivered by *Superſede* of priviledge, and the party that arreſted him commonly committed for his contempt.

*No Superſedeas by way of protection, but to Officers and Miniſters of Court.*

*Rodny Ar.* ſought by Petition a *Carolî* (for that there were many that ſought to arreſt him at Law) to have a *Superſedeas* of priviledge, as a Protection to keep him from arreſts, which none may have but Officers and Miniſters of Court. And no Suitors are to have a *Superſedeas* of priviledge, but to deliver them after they be arreſted, and not to have it beforehand as a Protection; and herein the ſix

Clerks

Clerks returned their Certificate to the Lord Keeper a *Car. in his verbis ſſ.* We do not find any ancient preſident for a Writ of priviledge by way of petition for ſuch as are Suitors, and having Suits depending in this Court, but for being brought up by proceſs and then arreſted in their coming, or neceſſary time of attendance, or return home, a *Superſedeas* of priviledge *de arreſtari & penitus deliberari* hath been uſually granted.

*The priviledges of Attendants, Miniſters and Clerks of the Chancery.*

The dayly Attendants and Miniſters of the Court of Chancery, may not againſt their wills be ſued elſewhere out of the Court here, otherwiſe then for freehold or fellony; but are diſcharged by ſuperſede of priviledge of all Suits, *Tempor. R. 3 Jo. de Leceſter* a Clerk of the Chancery being ſued in the Common Pleas in an Action of Debt, ſuffered judgement to be entred there againſt him by default, and then by Writ of Error removed the Record into the Kings Bench, after which by a ſpecial *Certiorari* in that behalf, directed from hence into the Kings Bench both for the one and the other reciting that the original cauſe *de mero jure* did belong to the Chancery, was hither removed to be here only proceeded in, if the party ſo thought good, *In Rot. Clauſ. de A. R. 3. memb. Turri London.*

*Dewes one of the ſix Clerks, priviledged againſt Juſtice Yelverton.*

So the cauſe of Juſtice *Yelverton* and *Dewes* one of the ſix Clerks, where *Dewes* was delivered by *Superſedeas* of priviledge againſt Juſtice *Yelvertons* arreſt (being a Judge of the Kings Bench) by the Lord Chancellour *Egerton*, which he had then ready in his pocket.

A Defendant coming to execute a Com-

miſſion, being arreſted, had a *Corpus cum cauſa*, and was ſet at liberty, *Int. Jackſon* and *Vaughon T.* 34 *Eliz.*

A Plaintiff arreſted here, when he came to examine his Witneſſes, was diſcharged by Superſedeas of priviledge, *Banniſter Cont. Bond. Tr.* 34. *Eliz.*

A Plaintiff coming to follow his Cauſe half a year after his Bill exhibited, was arreſted in *London*, and had his priviledge in 31. *Eliz.* it appearing that he came up only for the Cauſe ſake.

*Moyſley* coming into the Court to ſhew cauſe according to an order made here therein, and returning home again after his Cauſe ſhewed, was watched, and arreſted by Bayliffs of *Middleſex*, whereupon the Bayliffs were preſently ſent for into the Court and committed, and *Moyſley* diſcharged by the Chancellour *Egerton.*

A Plaintiff being arreſted by the Defendant in coming to execute a Commiſſion, an Attachment was awarded againſt the Defendant, *Church contra Sedbine.*

*A Plaintiff forma pauperis not admitted to ſue in Chancery but of late time.*

A *forma pauperis* hath heretofore been ſeldom admitted to ſue in Chancery as Plaintiff, except in ſome cauſes of conſideration, and the cauſes being of worth, but referred originally to the Court of Requeſts, or to the Provincial Councel if the cauſes did ariſe within thoſe Juriſdictions.

And thereupon the courſe hath been (which was conſtantly obſerved by the Lord Chancellour *Egerton*) that when the Plaintiff did begin his Suit here, without being then admit-

ted

ted in *forma pauperis* to poſſeſs the Court thereof, that then hanging the Suit, he ſhould never (to delude the Court) be admitted in *forma pauperis*, but go on as he began.

But the Defendants have been admitted to defend in *forma pauperis* (upon Oath that they are not worth five pound their Debts being paid) both in the beginning and hanging the Suit here.

Of late time both Plaintiff and Defendant in the ſame cauſe (againſt all order) have procured admittances in *forma pauperis* on both ſides, which hath much peſtered the Court, moſt of their Suits being Suits of vexation, or to have ſome countenance to beg by, and commonly their cauſes coming to hearing after many clamours, do appear no other.

A vexatious Plaintiff in *forma pauperis*, and not able to pay Coſts upon the Diſmiſſion, hath been ordered by the Lord *Egerton* to be whipped, upon the equity of the *Stat.* 23 *H.* 8. *cap.* 15. and no more to be admitted in *forma pauperis*, *Knap. contra Knap. Hill.* 9. *Jac.*

*A Plaintiff in forma pauperis whipped, when not able to pay Coſts.*

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## *Cauſes uſually relieved in Chancery.*

A Man is bound in an Obligation with a penalty to pay money here at a day, and coming up with it, is robbed by the way or ſome other caſualty befals him.

*Accident.*

So if Rent reſerved upon a Leaſe, with condition of forfeiture for *non*-payment at a day, and ſome ſuch accident happens,

So

*Wilful default or gross negligence not relievable.*

So of a Morgage the Lord *Egerton*, saying in the cause of *Pelham* and *Seimour*, that in equity they are but to take advantage of wilful default and gross negligence.

*Part of the money paid, and the Obligee sue for all.*

So if most part of the money be paid, and the Obligee sue the whole Bond, *Hill. 9. Jac.* *Ralberam Knight* against *Harrington* the Plaintiff paid the Debt due by the Bond to *Dean* the Broker, of whom he first received the money, *Deanes* man runs away with the money, the Plaintiff was discharged against the Defendant by the *Lord Egerton*, he saying, let the Usurer and Broker reckon together, and the Plaintiffs Bond was ordered to be delivered up to be cancelled.

*Money paid to the servant of the usurers Broker, who runs away, and the Obligor relieved against the Bond.*

*Oblig. satisfied without acquittance relieved.*

A man payes a Debt due by a simple Obligation, and takes not in the Bond nor any acquitance under Seal, he is to relieved.

*Order for further assurance, where time for making it by agreement is elapsed.*

The time of demand of further assurance of Land being past, though no remedy at Law, yet ordered here to make further assurance, *Rempe contra Rempe. M. 9. Jac.*

*Divers Obligees, one is sued, he prayes contribution against the rest, and decreed accordingly.*

Divers are bound in a Bond, one of them is only sued, he brings his Bill in Chancery against the rest to contribute, and decreed accordingly, *Fleetwood contra Charnock Trin.* 1629.

*Wilful forfeiture of a condition relieved.*

An Entail cut of contrary to a condition in the conveyance only to make his wife a Joynture, and then the remainder in tail settled as before; the forfeiture was relieved here, *Bayl. cont. Read. 38. Eliz.*

*Copphold Fines.*

As in Cases for Copyholders for Fines arbitrary to have them reasonable, for where customs are once restrained by the Lords in some

case

Cases not being regarded by the Common Law, remedy hath been had here.

A Tenant for life, rem. for life, rem. in Fee; the first Lessee for life commits Waste, it is a wrong prohibited here, and yet no remedy at Law for it. *Waste, relievable here, where there is none at Law.*

Neither doth every Estoppel (being but a fiction in Law (as the Lord *Egerton* called it) binde here, but the party may be relieved according to the reality of the Cause here. *Estoppel, how relievable.*

One assures the consideration of 40 l. received to assure Land, an Action upon the Case only lies at the Common Law to recover damages, but to have the Land assured according to the bargain a Suit lies here, *King contra Reydon. Tr. 39. Eliz.* *Assumpsit to assure Land.*

So when an Action upon the Case lies at Common Law for an Answer, in which Damages are only to be recovered, to avoid multiplicity of Suits, and to amend Answers, remedy hath been here, *H. 9. Jac. Houlter contra Taylor.*

A Lease omitting the Leassees name in the Demise, it being so set down in the *habend.* relieved here, *Butler contra Doddington, 22. Eliz.* *Lessees name omitted in the habend relieved*

An Attornment or Deed relieved here, where no help is at Law, *Hinch contra Fowler, Tr. 36. Eliz.* *Attornment.*

*Mich. 5. Jac. Shute contra Mallory*, a Lessee for years made a Lease of part of his Term, rendring rent to *Mallory*, and after granted the remnant to *Shute*, *Mallory* having such a Lease refused to attorn or pay any Rent, and no remedy at Law being against him, an Attornment was ordered and granted here, the Lord Egerton

*Egerton* saying, He ought not in conscience to hold the Lease without paying his Rent.

*Relief in Chancery against a mans own Release.*

One runs away with 3000 l. with which he was trusted to lend out, and for a long time hides himself, and writes unto the party, that if he will be content with 500 l. again, and give him a discharge and general release for the rest, he will pay him 500 l. The Creditor not knowing otherwise how to come by him, or any of his money, did release and recieve 500 l. yet after was relievd here for the rest, notwithstanding his own Release to *Lake* a Scrivinet, for by the Lord *Egerton*, *Potentia sit injuria si dolese sit inductus ad consciend int. Petre & Monsham 40. Eliz.*

*Norferd contra Prockter M. 1. Jac.* The Defendant having gotten a Release of the money by circumvention, because he could prove no payment thereof, nor consideration for there'd was decreed by the Lord *Egerton* (notwithstanding his release) to pay the money,

*Relief in Chancery after Judgement at Law.*

After Judgement had in an Action of Debt upon an Obligation brought in a forreign County, wherein the Bond was not made, which was done (as was affirmed) to hide the truth, which cannot be so well found out in any place as in the proper County, the Defendant was thereupon relieved in Chancery, 9. *E* 4. 22.

*Relief in Chancery after Judgement how.*

For relief in Chancery after Judgement at Law, see those Resolutions commanded by his Majesties privy Seal, to be inrolled here in *Rotulum patentium de A. 14. Jac.* And also the Royal decision of the King in the Starchamber entred the same year with the Register of this

this Court; neither doth this Court meddle with the Judgement, but deals with the corrupt conscience and person of the party, *Job.* 29 *v.* 17. *Per fringebam molares iniqui & de dentibus illius auferebam prædam*, &c. Vouched upon an unconscionable Judgement and Execution gotten at Law, and then relieved here, *Pegeon & Addinton M.* 15. *Jac.*

*Relief against a Fine levied by circumvention.*

In *Farmers* Case the party relieved here against a Fine levied by circumvention, &c. *Russy contra Maffeild*, a Decree made against a Fine procured against an Idiot, *Trin.* 10. *Jac.*

*Purchasor relieved upon a covenous Judgement or Defeasance.*

After Judgement acknowledged the Cognusor sells his Land, and after that a new Defeasance is made upon this Stat. upon this agreement between the Cognusor and the Cognusee, the Purchasor relieved against the new agreement.

*Hurleston contra Dr. Hone*, a Statute without a Defeasance, as against the Purchasor, is presumed either to be upon trust or fraud, and where a Defeasance is made after such purchase, the Purchasor relieved, *Hill.* 9. *Jac.*

*Trust.*

Trustees, where the Law looks only to the outward assurance, and not upon the inward, and secret trust, this Court gives relief therein, and causes the trust to be performed.

*Purchasers bona fide.*

But a purchase *bona fide*, upon valuable consideration, and not knowing of such secret trust, is not bound more in equity then in Law, but the party decieved in his trust, must there resort to him that decieved him for his recompence.

But a Purchasor, although upon valuable consideration, yet having notice of the trust;

is to be bound thereby, and also if he dies, b
the Lord *Ellesmere, hæres tenetur ex*
*junctis, Peacock contra Knivett.*

*Lands known in quantity, but not in particularity, decreed and set out.*

A man hath Lands and knows the quanti
thereof, but not particularly where it lieth, b
reason it hath been obscured by Tenan
and occupiers thereof, this Court will Decre
him his Land; and in the Case of the Dean
*Landaff contra Jones*, a Commission was awar
ed to lay out so much where most convenien
*M.* 10. *Jac. Auchlevin Dñus contra Methold* 3
*H.* 6, 26. *per Cur.* the King granted the goo
of a man attainted, the Grantee may comp
those to whose possession they are come,
set forth what and where they are.

*To discover the goods of a man attainted.*

*Evidences.*

It is usual in Chancery to demand Ev
dences concerning the Plaintiffs Land
which he makes Title, for that he knowe
not wherein they are concerned nor th
Dates.

If the Defendant in his Answer makes T
tle to the Land, and justifies the detaining
the Evidences for maintenance of such his T
tle, it was ordered 28. *Eliz.* that the Plaint
should bring his Action at the Common La
for the Land to which the Defendant shoul
presently plead in chief, and that he for who
the trial should pass, should have his Posse
sion staid here; and have the Evidence
*Lambert.*

*White* and *Scrape M.* 9 *Jac.* set out by Com
missions twenty acres of Furrs which had bee
obscured.

*Heirs omitted in Purchase and relieved.*

In a Feofment of Lands for money, th
word (Heirs) is omitted in the Deed and ho
pen here, *Lambert.*

If the Morgager pay the money due upon the Morgage, according to the conditions, and the Morgagee will not deliver up his Deed to be cancelled, his remedy is here.

*Morgagee denies to deliver the Deed upon payment of the money*

A man selleth Lands in two Countries, and maketh Livery but in one holpen here for another Livery, Dr and *Stu.* 57. for the contract faileth only in Circumstance and Ceremony

*Sale of Land in two Countries and Livery in one.*

A Lease is made of a Messuage with the appurtenances, by Law no Land passeth, yet for that the same rent was reserved in a former Lease, made in the same words, and Lands had been occupied with the House, so that Sr. *Thomas Bromley* by advice with the Judges, ordered the Land to be enjoyed, *Lambert.* But not so against Purchasers of a reversion to make a Lease void in Law good against them.

*A Messuage with the appurtenances.*

A man bound as a Surety, for fear of arrest, paid the Defendants Debt at the day, so that if he should sue his Counterbond at Law, *Non damnificatus* is good plea against him, holpen here to have his money repaid him, *M.* 31. & 32. *Eliz.*

*Surety relieved upon payment of the Bond at the day.*

*Broughtons Case Coke.* 5. 24. *cont.*

Where Deeds do concern one in Rem. or reversion as well as the Tenant for life, who hath gotten possession of them, ordered here to bring them in indifferently, *Hill.* 10. *Eliz.* and if either party have use of them, to have them out upon Bond to bring them in again.

*Deeds to be brought into the Chancery.*

A Suit ordered and decreed in the Court of Requests, and staid there for Execution, by a prohibition out of the Kings Bench, the Decree of the Court of Requests was ratified and confirmed by a Decree and Authority of this Court,

*Decrees in other Courts confirmed in Chancery, notwithstanding Prohibitions.*

Court, *H.* 13. *Jac. inter Rames & Farmery* so between & *Tayler*, and between *Enderby & Hutlestion.* 9. *Jac.* So of Decrees Provincial lately in *Fluds* Case; a Bill preferred here for corroboration of a Decree in the late Qu. *Annes* Court.

*Legacies sued for in Chancery.*

In former times Suits were very common here for personal Legacies, yet the Lord Chancellour *Egerton* would say, the Ecclesiastical Courts were more proper for Legacies, and sometimes would send them thither: But if the Defendant did answer, and take no exceptions, he would proceed to hearing here, *Nurse contra Borne, Mich.* 9. *Jac.*

*Inequality of persons cause to sue here.*

Inequality of persons is cause to hold Suit here, although otherwise the matter be determinable properly at the Common Law, *Green cont. Cope Hill.* 9. *Jac.*

*Exception to the Bill after publication, not allowed.*

*Hawkins Mil. contra Popham Mil. Mich.* 9 *Jac.* the Defendant answers and demurres not, but after examination of Witnesses and publication, the cause coming to hearing, then takes exceptions that the Cause was properly at the Common Law; But the Lord Chancellour *Egerton* said he would hear the Cause, the charges of the Suit being past; for the Defendant might have demurred at first if he had pleased.

Suit

## *Suits denied help in the Chancery.*

Suits grounded upon Wills nuncupative or Leases parol. *Will nuncupative and Lease parol.*

Suits upon long Leases of 100. or 1000. years, for such long Leases are commonly made to defraud the King of his Wardships, &c. Or upon some ill or fradulent ground. Lord *Egerton.* *Long Leases because they suppose fraud not relievable.*

Verbal agreements not executed on either part. *Verbal agreements.*

Perpetuities of all kinds by Assurances, Statutes, acknowledged, &c. for they fight against God. *Perpetuities.*

A Plaintiff making his Title by an entail, the Lord Chancellour *Egerton* dismissed it, saying, of the Statute *de donis conditionalibus*, calling it the ambitious Statute, let it help him at the Law as it may. *The Stat. de donis, &c. not favoured in the Chancery.*

Remainders put in the Crown to defeat Purchasers. *Remainders in the Crown*

Brocages for Marriages and Suits to have money, gifts, &c. *Johnson cont. Wells Hill 9. Jac.* *Brocages for Marriages, Suits, &c.*

Casual morts upon the return from *Constantinople*, &c. *Casual morts.*

Wagers and Play-money. *Wagers.*

Play-houses and all houses of iniquity, the Court being a Court of equity. *Playhouses.*

Usurers and all Simoniacal bargains. *Usurers, Simony.*

Several deeds of gifts to deceive Creditors, unless it may be ordered for the benefit of the Creditors. *Wayford cont. Molton, Mich. 42, Eliz.* *Deeds of gift to defraud Creditors.*

*Eliz. Wayland. cont. Allington. H. 8. Jac.*

*Concealed Titles.*

Estates derived under concealed Titles, the Lord *Egerton* saying that as the Titles began by the rigour of the Law, let them so maintain them by the Law as they come, *Clun. cont. Sherley.* M. 10. *Jac.*

*Country awards.*

Country awards by the voluntary submission of the parties without any order or reference of Court.

*Of what value the causes ought to be that are triable in this Court.*

All causes under the value of 40. sh. in Freehold, or 40. l. in personalty, unless it be for Rent-service, which being never so small, as a Sparrow-Hawk, *&c.* hath been holden here, because the Land holden being of value may escheat.

Note.

*Anno Dom.* 1644. overruled upon demurrer to a Bill of 8. l. because the Court of Requests not sitting, there is no other relief, the Defendant ordered to answer.

*A man steals his Wife, and then sues for a portion, no remedy.*

A man steals his Wife against her Friends assent, and sues for a Portion here; Lord *Egerton*, He that steals flesh let him provide Bread how he can; *Bagnal cont. Langhton* M. 9. *Jac.*

*Husband and Wife severed.*

*Stanshy cont. Cross.* Lord *Egerton* said, he would give the example in Chancery of an Order of a Wife severed from her Husband, saying, let the Bishop call them together, and allow her Alimony.

The

## *The manner of Proceedings for Priviledged persons.*

THese are to be proceeded in here according to the strict rules of the common Law, and are all for or against the Officers or Ministers of the Court here priviledged for any thing, except free-hold or fellony, or against or between strangers upon record here remaining. *Priviledged persons.*

If the Suit be here for a priviledged man, the process is an attachment of priviledge directed to the Sheriff to attach the Defendant, to have his body at the return thereof, and the Defendant then appearing, before the priviledged man declares against him, the Defendant is to put in Bayl to the Plaintiffs Suit, which by the course of the Court are to be four such sufficient persons as the Plaintiff himself shall allow of, which Bayl is not as at the Common Law, that the Defendant shall render himself, but absolutely to satisfie the condemnation: *Archibald contra Barrell, Mich.* 23. & 24. *Eliz.* And after Bayl so put in by the Defendant, he is not to depart until he have pleaded no Issue, and be licensed by the Court thereunto; *Pole contra Gradwich*; Forasmuch as the Defendant appearing upon an Attachment of priviledge at the Plaintiffs Suit, hath put in Bayl, and joyned in Issue to the Action brought against him, therefore he is licensed to depart, *Pasch.* 27. *Eliz.* *A Suit by a priviledged person against a stranger how to be proceeded in.* *Bayl such as the Plaintiff likes of.*

*Priviledged persons to take notice of the Plaintiffs Bill against them, without process, it being filed.*

If the Suit be against priviledged man, the Plaintiff then only files the Bill or Declaration in Latine against him, whereof the priviledged man so Defendant is to take notice at his peril without any process, and plead by the end of the Term, or else Judgement to be entred against him.

*Issues in Latine pleas in Chancery to be transmitted for trial to the Kings Bench.*

*Record never remanded by B. K.*

If the parties here in any Latine Plea descend to issue, the proceedings are here no further then after the issue joyned, but the Record is then transmitted for the Issue to be tried in the Kings Bench, for no tria's by Jury are in Chancery, but the Record being so transmitted is never remanded, but the Verdict, Judgement, and Execution thereupon entred, and Execution awarded there and not in Chancery, and a e proceeded in, and remain there of Record.

*Demurrer to a Latine plea.*

But if the parties come in and demurre here, that demurrer is argued, and Judgement thereupon entred, and Execution awarded here in Chancery, as Law shall be in the Kings Bench.

*Rules in Latine pleas as at common Law.*

Upon motions made in Latine, Pleas, Rules, and Orders are given in Chancery as at Common Law as the case requires.

*Forreign plea not allowed.*

*Inter Yelverton & Burton* the Defendant putting in a forreign Plea, was ordered by the Lord Chancellour *Egerton* either to be sworn to his Plea, or to put in a Plea as he would stand to it, not forreign.

*No priviledge but to immediate Officers of the Court, and their menial servants.*

22. *Decemb.* 1619. at a general Seal, the Lord Keeper *Coventry* commanded the Register to enter an Order that no man should be priviledged but the Officers and Clarks of the Court,

Court, or *Affidavit* made that the party is one of the menial ſervants of an Officer.

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## *A Compendium of all the Officers in the Chancery, and what they do in their ſeveral Offices.*

AS God doth diſpoſe his Government by Juſtice and Mercy, whereof *Mercy* hath the ſupream place in the Lords Tabernacle, as that which was put above the Ark, in which were two Tables of Stone, in which the Law was written, *Exod.* 25. To the which Saint *James* alluding ſaith, that *Mercy triumpheth over Judgement*, Jam. 26. Even ſo the Princes of this Land to the imitation of that heavenly repreſentation have appointed 2 ſupream ſeats of Government within this Land; the one of Juſtice, wherein nothing but the ſtrict letter of the Law is obſerved; and the other of Mercy, which in the rigour of the Law is tempered with the ſweetneſs of Equity, the which is nothing but Mercy qualifying the rigour of Juſtice: *Nam ipſæ etiam leges cupiunt ut jure regantur*, id eſt, *ut levi & facili ac benigna interpretatione temperentur.*

*The two ſupream Laws of the Realm.*

## The Chancery, and the antiquity thereof.

*The Original of the Chancery.*

THey of the profession of the Civil Law do labour to prove that this Court of Chancery within the Realm had his original from them, and their Argument is thus, *viz.* It must needs be that the Chancery is the ancientest Court in this Realm, because from thence all original Writs and Commissions do come, whereupon all other Courts do ground their proceedings; That Court therefore in time and nature is the first, and could not take light from the other Courts of the Common Law, but from some other Courts that were before them: The very words of *Cancellarius* and *Cancellaria* are Latine words, and are found to be first used by the Civil Law, and did signifie such an Assistant to the Soveraign Prince as for his wisdom and skill in Law was adjoyned to him, and was so called because he did sit, *inter eosdem Cancellos cum Principe*, and in his absence determined for him, and in his stead. But yet we read not this word *Cancellarius* in the ancient times of the Civil Law, that was practised, whilst the Common-weasth stood uninvaded by perpetual Dictatours and Emperours: until about 300 or 400 years after, about which time and after this Realm being wholly under the *Romans* dominion, as also was the chief of the then known World; no doubt their language,

*Cancellarius & Cancellaria from whence derived.*

but

but especially their Laws were here received; And we read that *Trebatius* (an ancient civil Lawyer, and who is often spoken of in the Precedents, who lived in *Julius Cæsars* time) was then 40. years before Christ did remain at *Samarobrina* in this Island of great Britain, and died here likewise. Afterwards the very Oracle of that Law *Emilius Paulus Papinianus* did profess the Law, and kept this Tribunal sept of Prætor at the City of *York*, Vide Dr. *Cowsens* 3. 53. & *Cicero's familiar Epistles.*

*Chancery not originally for matter of equity.*

Note that this Court was not originally for matter of Equity, but the only use then was to Seal the Kings Patents and Commissions, and to enrol them; and from thence in the Kings Name (from whom as from a Fountain of Justice it is derived) to send Writs remedial to the Kings subjects, but after to meet with *summum jus* it was thought necessary to joyn to this Court matters of Equity by Mr. *Cambden* 181. Also also it may appear by an ancient Treatise of the Laws and Usages of this Kingdome, whereby the Realm governed above a 1000. years past, and the words are these, *viz.* That every one upon complaint out of the Kings Chancery, a Writ remedial without any difficulty and in the time of King *Alfr.* there were no Writs of grace but all Writs were remedial, and grantable as of duty by return of an Oath, &c. *Vide* the Lord *Cooks* Preface to the Reader before his 9. report

Sir *John Fortescue* Knight, Chief Justice of *England*, in the reign of *Hen.* 6. writing to Prince *Edward* saith; that in all times of

the Kings of several Nations, *viz.* the *Romans*, *Saxons*, *Danes* and *Normans* reigning here, the Realm was ruled with the self same Customes that it is now governed withal, neither are the Romans civil Laws by so long continuance of ancient times confirmed, nor yet the Laws of the *Venetians* (which above all others are reported to be of the most antiquity) forasmuch as their Island in the beginning of the *Brittains* was not then inhabited, as *Rome* was then also unbuilded, neither are the Laws of any Pagan Nation in the World of so ancient continuance, *cap.* 17. And to this effect Sir *Edward Cook* writeth notably in his Prefaces to his 3. 6. 8. and 9. Books of the Laws and Usages of this Kingdom, whereby this Realm was governed above 1100. years past beginning with the diversities of Courts of Justice, which are *Officina legum*, and particularly the Chancery, Thus it was ordained that every one upon complaint should have out of the Chancery a Writ remedial without any difficulty. In the time of King *Alfred* there was no Writs of grace, but all Writs were remedial as of duty by reason of an Oath; The Writs of grace are *Subpœna*, *Certiorari*, &c.

*Writs of grace.*

Note, *Pomponius lib.* 2. *cap. de origine juris* affirmeth that in *Tarquinius Superbus* his time, there was no Civil Law writen, and that *Papirus* reduced certain observations into writing, which he called *Jus Civile Papirianum*, 9. *Co.* 7. *par.* fol. 13. 10. *Eliz.*

*The antiquity of the common Law.*

saith, that the common Law hath always since the Creation of the World been in use.

*Brevia mandatoria & remedialia* are all Writs

reall

real and personal, by which the party wronged is to recover somewhat and to have remedy by. *Brevia mandatoria & non remedialia*, are not tied to any place, but do follow subjection and allegiance in what Country or Nation soever the subject be, as the Kings Writ to command any of his subjects residing in any forreign Country to return into any of the Kings Dominions, *sub fide & ligeantia quibus nobis*, &c. *Co. lib* 7. 20. *Dyer* 17. 68.

Brevia mandatoria remedialia & non remedialia.

All Judges of *England*, 9. *Ed.* 4. 53. did manifestly affirm that the Chancery, Kings Bench, Common Pleas, and Exchequer be all the Kings Courts, and have been time out of mind, and so that no man knoweth which of them is most ancient 19. *Ed.* 4. 4. and *Cooks Preface to the* 8. *Report.*

*The antiquity of the highest Courts at Westminster.*

Doctor and Student *lib.* 2. 126. where it is agreed that of the first institution of the said Courts, and that such Courts there should be, there is no Statute nor Law written in the Laws of *England*, but the ground and beginning of the said Courts depend upon the Customes of the Realm, the which custome is of so high authority that the said Courts nor their authority may be altered, nor their Names changed without Parliament. And *Cook* in his Preface to his third Report proveth out of 16. *lib. Ass.* Plaintiff 14. that the Court of Chancery is *Officina Justitiæ & æquitatis*, where all original Writs in ancient times were the grounds of all Suits, were devised and framed.

*The Chancellors authority not by Patent, but by delivery of the great Seal, and in is recorded in whose presence it was delivered.*

The Chancellour hath no commission by Letters Patents, as all other Judges and Sheriffs have, but he recieveth authority by delivery

very unto him the great Seal of *England*. *Dr. Cousens Apology* 2. *part. cap.* 2. And when the King hath made his Chancellour, there is an entry made in a close Roll in the Chancery, declaring on what day, and in whose presence the great Seal was delivered; and any other Grant or Patent for that Office, there ought not to be for that the person to whom the Office is committed hath the keeping of the great Seal in his own hand. *Vide Cambden* 180. And the Chancellour, is but at will, *Durante beneplacito Regis. Co. l.* 9. 99.

*Custos magni sigilli.*

The *Custos magni sigilli* is caled the Chancellour of *England* by the Act, 7. *H.* 6. *cap.* 1. And if a man slay the Chancellour being in his place doing his Office, it is high Treason by the Statute of 25, *E.* 3. *cap.* 2. and by 5 *Eliz. cap.* 15. It is declared that the Lord Chancellour and Lord Keeper have one power.

*The place of the Lord Chancellour in Parliament.*

And by the Statute of 31 *H.* 8. *cap.* 10. It was enacted that the Lord Chancellour being of the degree of a Baron of Parliament, or above shall set and be placed on the East side of the said Parliament Chamber, on the higher part of the Form of that side above all Dukes, except such as shall happen to be the Kings Son, the Kings Brother or Uncle, the Kings Nephew, or his Brothers or Sisters son. And if any person which shall hereafter happen to have the said Office of the Lord Chancellor to be under the degree of a Baron, by reason whereof they can have no interest to give any voice of assent or dissent in the said house, that then in every such case he shall sit and be placed at the uppermost of the seats in the midst of the Parliament chamber.

To the Chancellour appertaineth the constituting of the Kings and Queens Commissions throughout all *England*.

*Lamb. Justice lib. 1. cap. 3.* and by the Act of 3 *E. 6. cap. 11.* the Lord Chancellour was fully restored to his ancient Authority in naming the *Custos Rotulor.*

As often as any place of Judicature is void, the King useth to chuse one of his Serjeants at Law, and him by his Letters Patents to ordain a Justice in that place, and then the Lord Chancellour shall enter into the Court where the Judge is so wanting, bringing with him those Letters Patents, and sitting in the midst of the Judges, causeth the Serjeant so elected to be brought to the Bar of the Court, to whom in open Court he notifieth the Kings pleasure of electing of him to the place that is void, and causeth the aforesaid Letters to be openly read and published, the which done, the Clerk of the Rols (but not of latter practice the Clerk of the Crown) shall read before the same elect person the Oath that he shall take, which when he hath sworn upon the Gospel, the Lord Chancellour shall deliver unto him the Kings Letters Patents aforesaid; *Fortescue cap. 51. Cambd.* 180. who of the credit of this great Court, and the Authority of this great Officer, cites the Testimony of a good Author who lived in the time of *H. 2. in hec verba, viz.* The dignity of the Chancellour of *England* is, That he is reputed the second person of the Realm, and next unto the King; with the one side of the Kings seal (whereof he hath the keeping) he may sign his own Injunctions,

*The Judges at Westminster sworn before the Lord Chancellour.*

ctions and disposse and order the Kings Chappel as he liketh, to receive and keep all Archbishopricks, Bishopricks, Abbies, and Baronies void and falling into the Kings hands, to be present at all the Kings Councels, and thither to repair uncalled; Also that all things be signed by the hand of the Clerk who carrieth the Kings Seal, and that all things be directed and disposed by the advice of the Lord Chancellour.

*Chancery a Sanctuary for strangers.*

The Chancery is a Sanctuary and place of refuge for all Strangers, 31 *H.* 6. 4. 13 *E.* 4. 9. *b.*

## *The Chancellour, and his Place, and Power.*

*How many Chaplains the Chancellour may have.*

THe Chancellour of *England* by the Statute of 21 *H.*8. *cap* 13. may have three Chaplains, whereof every one may purchase Licences and dispensation to receive and keep two Benefices with cure of Souls; and to the Chancellours Office in process of time much Authority and Dignity hath been allowed and adjoyned by Act of Parliament, whereof you may read in the Abridgement of Statutes in the Table and stile of Chancery, and thereupon by the Books of the common Law it is acknowledged that the Chancellour hath two Powers, *viz.* Ordinary and Absolute, *Stam. Prerog. cap.* 20. 64. But more thereof more distinctly hereafter, and now concerning his Associates and Assistants in Chancery.

*Officers*

## Officers in Chancery.

THe Master of the Rolls is one of the twelve Masters of the Chancery, his Title in the Patent is *Clericus Parvæ Bagæ Custos Rotulor & Custos domus conversorum*, the which house is so called, because the Jews in ancient time, as they were any of them brought to Christianity, were bestowed in that house separately from the rest of that Nation in *London*, and the house with the appurtenances was destinated by *K. E.* 3. to the keeping of the Rolls Records of the Chancery, and therefore to this day it is called the Rolls, *Cambden* 328. *Master of the Rolls.*

He is called Clerk of the Rolls, 22 *R.* 2. *c.* 2. and in *Fortescue cap.* 24. and by no Statute else Master of the Rolls until 1 *R.* 7. *cap.* 18. and yet in *cap.* 15. the same year he is called Clerk, and as a Clerk he taketh Oath in open Court, the form whereof was by Parliament, 18 *E.* 3. *How anciently called.*

In that Land Houses or any other yearly real profits may be incident or appendant unto an Office, as of the Warden of the Fleet, *H.* 7. 5. But then the Officers are of Inheritance, for else would ensue a great inconvenience, *viz.* the free-hold would be in suspense after the death of the Officer, until a new Officer be made, if the Office do not descend unto an Heir, or some man who hath the succession by Commissions or Letters Patents from the King, *Dyer* 41. *Quere.* *Lands may belong to an Office of Inheritance.*

The

## The Oath of the Master of the Rolls.

Master of the Rolls his Oath.

YOu shall swear, That well and faithfully you shall serve our Soveraign Lord the King, and his People in the Office of a Clerk in Chancery to which you be entituled, and you shall not assent to, or procure the King Disherison, nor Damage, to your power, nor you shall do nor procure to be done, any fraud to any mans wrong, nor any thing touching the keeping of the great Seal, and you shall lawfully Counsel in things that touch the King when you shall thereunto be required: And the Counsel you shall know touching him you shall conceal: And if you know the King disherison perpetual damage or grief to be done upon things which touch the Great Seal, you shall put your lawful power to redress and amend the same, and if you cannot do the same, you shall certifie the Chancellour or others which may do the same to be amended to your intent. And for the Clerks of course shall be add

*And you shall not bring nor to your knowledge suffer to be brought any Writs, which you make out of the Court not Sealed, thereof to do Execution, nor shall Record any Attorney by Writs, or without Writs, without special Licence, if you have not lawfully examined the parties. And the other Attorney in propria persona: Neither shall you deliver any Writ which shall be of Commandment to the Examiners nor to the Seal, before that the same Writ be sent to you by the Commander, which thereof hath power, unless it be to the Chancellour, or to one of the Masters which command you to make the Writs. And all the Writs which you shall make you shall deliver them to the Examiners by your own hand, and by one Companion which is sworn to the King (if you your self be out of Court, because of sickness or other necessary cause, so that you cannot do the same;) And that no Writ written of another mans hand be delivered to the Examiners under your name as yours, nor no man shall put your Name to your Writs but your self: As God you help, &c.*

The

THe Master of the Rolls hath been of long time numbred and reckoned amongst the greatest Officers and Magistrates of this Realm, as by the penning of the Statute of 14 E. 3. *cap.* 1. appears, *viz.* It was enacted that the Chancellour, Treasurer and Keeper of the Privy Seal, the Steward of the Kings house, the Lord Chamberlain, Clerk of the Rolls, Justices of both Benches, *&c.* should be called to the naming of Justices of the Peace, Sheriffs, Escheators, *&c.* and that they should be sworn to do the same faithfully, and without affection.

The Judgements given in the case aforesaid are in this form, viz. *Per quod de advisamento Justitiar' &c. consideratum fuit tunc & ibidem, &c. lib.* 8. 23. But the Judgements of the common Law are general, viz. *Idem consideratum per curiam*, for if the Judgement be entred *Per capital' Justic' cum assensu*, of the rest, it is not good, *co. l.* 5. 3.

*Master of the Rolls not Judge as Master, &c. but by special commission.*

But I do not conceive that the Master of the Rolls hath a lawful calling to be a Judge in the Chancery in the absence of the Lord Chancellour, who is the only Judge of the Court, or by what authority the Master of the Rolls doth sit and determine causes in the Chappel of the Rolls, as of late years hath been used, unless he be authorized thereunto by special commission under the great Seal; but much less may any of the Masters pretend any authority as Judges in that high Court without any

*He is.*

*They have.*

like

like special Commissions, but the first president was Cardinal *Woolsey*, Chancellour, *co. pref. ad.* 3. *Rep.*

Yet nevertheless the Master of the Rolls by the judgement of Mr. *Marrow* is a general conserve vator of the peace by his Office, but he maketh process, and taketh Recognisances thereupon, not as incident to his Office, but by prescription, *Lamberts Just. P. lib* 1. *fol.* 12. *Master of the Rolls a conservator of the peace.*

The Lord Chancellour sometimes in great and weighty causes hath used to call some of the Judges to assist him, or rather to associate with him; for they which are so called are not Judges with him, so did the Lord Chancellour *Egerton* Baron of *Ellesmore* in the great cause of the Princes Dukdom of *Cornwal*, call into Chancery the two chief Justices, and other Justices, and they severally did declare their opinions in open Court, and his Lordship openly published that he did associate them to him, telling them the examples of the Lord *Rich*, Chancellour and others, and said, that he held it a point of good discretion to follow the examples of wise men, but *Periculosum existima quod bonum virum non comprobatur exemplo*, *Cook Pr face ad lib.* 2. 14 *E.* 4. 41. 37 *H.* 6. 23. *Association of Judges to the Chancellour.*

It appears by a proviso in a Statute made 14 *H.* 8. c. 8. That the Master of the Rolls hath the giving of the Offices of the six Clerks in Chancery: But the Statute made 5, and 6 *E.* 6, cap 16. entitled an Act against buying and selling of Offices, there is no saving proviso or exemption for the Master of the Rolls for disposing or selling of the Offices of the six Clerks, *caveat ergo emptor*, *v. co. lib.* 3. *in fine*; *Offices that are to disposed by the Master of the Rolls.*

*Quære*, If the Statute doth not extend to Courts of Equity, as it doth to Courts of Justice at common Law? for it hath been adjudged that the Register and all other Officers and offices in Ecclesiastical Courts come within the danger and provision of the Statute, 2. *Cro.* 269.

## *Masters of the Chancery.*

*Masters of the Chancery. The several kinds of Writs in the Chancery.*

*Bracton lib. Tract. de Excep cap.* 17. *fol.* 4. doth divide Writs into three parts, and thereof were three divers sorts of Clerks, *Sunt quædam Brevia formata*, viz. *Originalia vel de cursu*; *quædam Judicialia ex eis consequentia*, &c. *Quædam Magistralia quæ nec sunt de cursu, nec forta*, &c. *Et ita* also *lib.* 2. *cap.* 11. *Est inter cætera quoddam officium quod dicitur Cancellaria, quod vero provido & discreto*, &c. *Magnæ dignitatis debet committi*, &c. *Cui associantur clerici jurati qui in legibus & consuetudinibus Anglicanis notitiam habeant plenioremi.* And the Writs that they made were called *Brevia Magistralia*, because these Clerks who made them for their Science were well called *Magistri Cancellariæ*, and those who writ *Brevia de cursu* were, and yet are called Cursitors; And even as the Writs which the Cursitors do write, be called *Brevia de cursu*, even so the Writs which the Master doth draw in difficult cases are called *Brevia Magistralia*, *eo. lib.* 8, 9. And these Clerks were grave and ancient, skilful and well experienced in the course of Chancery, and called *Clerici de prima forma*, and of late

late times *Magistri Cancellarii* by *Egerton* Lord Chancellour in his Book of the *post nati*, and *Polydore Virgil* in his writing of *William* the Conquerer in *lib.* 9. saith, That there was instituted a Colledge or Fellowship of Scribes in this Court, *&c.* And so much may be true and probable, that in former times this Court was not furnished with Clerks in so good order as afterwards,

*Omnia fert tempus, pariter rapit omnia tempus.*

And within our memory the Cursitors office hath been disposed otherwise then in ancient time it was, and there hath been some other innovation besides.

Clerici de prima forma.

The ancient name of *Clerici de prima forma* is almost forgotten, and few of them have had that learning in the Laws of *England* which was required to be in those men, and no marvel, for that in many years past they have been men of another profession, and therefore there hath been also disuse of those *Brevia formata*; Yea shortly after *E.* 1. in whose time the Statute of *Westminster*, 2. *cap.* 24. was made, which Wils, *viz. Quoties cunq; de cætero evenerit in Cancellaria quod in uno casu reperitur Breve, et in consimili casu cadente sub eodem jure, & simili indigente remedio non reperitur, concordent Clerici de Cancellaria de Brevi faciend, &c.*

When Bishops were first Lord Chancellours.

Note this was one amongst many other inconveniencies induced into this Court, and to the Commonwealth, after Bishops were advanced to the high Office of Lord Chancellour, which place they began to possess in *H.* 2.

time, *Cambd.* 180. Mr. *Fox* his Book of Martyrs, 115.

Note *quod Clerici de prima forma* in this case are Coadjutors with the Lord Chancellour, for if they agree, then it is an end, and ſtands for Law, and then no reſerment to the Parliament, but if they do not agree, the cauſe muſt be referred to the Parliament, as appears by *Velainſt p.405. 406.407. 408.* *Rot. 2. c. 24.* by force of which Act the Writ called *Breve de ingreſſu in conſi'. caſu* was formed by the Clerks of the Chancery, *F. N. B. 206 f.* And this defect and failing of Clerks in the knowledge of the common Laws, and in framing *Brevia formata* inforced Judges in other Courts in many things to give allowance to the ancient form of Writs, and to inforce the party Plaintiff to make a ſpecial Court, when the Writ doth warrant the count in ſubſtance, although there be a varianoe in the circumſtance, *Co lib. 8 48. 49.* as for example the Writ of Aſſize of *Darr.* preſentment was formed in theſe words. *Quia advocatus tempore pacis preſentavit ultimam perſonam que mortua eſt*, yet nevertheleſs the Plaintiff was allowed to have that Writ in caſe the perſon did reſign and is alive, and as the form of the Writ, is, he ſuppoſeth that the Defendant did deforce him of the Advowſon; and yet by his court he ſhall declare that he or his Anceſtors did laſt preſent to the ſame Advowſon, whereby he ſuppoſeth that he is in poſſeſſion of the ſaid Advowſon, and it was allowable. *F. N. B. 31. b.* Even ſo if the Tenant hold by homage Anceſtrel and is impleaded, he may have a *Writ de Warrantia carte* againſt his Lord,

Lord, and the form of the Writ is, *unde eam habet*, though he have no Deed nor Charter to shew, but only his tenure by homage *Ancestr.* F.N.B. 14. And so if the Tenements be let to a man for half a year or less, and the Tenant make waste, the Writ shall be *quod tenet ad terminum annor.* but yet he must make a special Declaration upon the truth of the matter, and the Court shall not abate his Writ, by Mr. *Litlet.* 14. a. and many examples more there are.

*The precedency of the Masters of Chancery.*

A latter name of Masters of the Chancery retained with them, in which regard, forasmuch as they are in these dayes also grave and wise men, though many of them are of another profession, they retain their ancient precedency before all other Clerks, and do sit upon the Bench with the Chancellours, as when they were *Cojudices* with him in matters concerning form, and in *diebus illis* they were allowed Robes out of the Kings Wardrob, and there is no Recognisance acknowledged before any of them, and certified under their hand writing, but is of that credit that it is a matter of Record, and as effectual as if the same had been acknowledged in open Court; And every Defendant to a Bill exhibited into this Court must make his answer upon Oath taken before one of them; and also all Deeds and other Writings which are to be inrolled in the Chancery, are to be acknowledged before them; and the Lord Chancellour taking advantage of their leasure and opportunity doth many times of late refer matters which have depended in that Court and are ready for hear-

*Their Office.*

ing unto their examination; the which according to their examination and Certificate are decreed: But it is an old saying, That new means and old Laws are best for use, the Apothegme of *Periander* of *Corinth*. cited in Sir *Edw. Cooks* Preface to his fourth Book. And I know not how, but the People do complain much of this new imployment of them, and therefore read the Stat. of 1. *Jac* c. 10. And it is one (amongst others) of the greatest Honors of the common Laws, that causes are never adjudged or resolved *in tenebris*, or *sub silentio suppressis rationibus*, but in open Court, and there upon solemn and deliberate Arguments: First at Law, by Councel Learned of either part (and if the Case depend in the Court of Common Pleas, then by a Serjeant at Law) and after at the Bench by the Judges where they argue, the puisne Judge beginning, and so ascending *seriatim* upon certain days openly, and purposely prefixed, declaring at large the Authorities, Reasons and Causes of their judgements and resolutions in every such particular Cause; *Habet enim nescio quid energia viva vox*, A reverend and honourable proceeding in a Law, a greatful satisfaction to the parties and a great instruction and direction to the attentive and studious hearers, *Co. lib. 9. ad Lector. in fine* Mr. *Poulton*.

*Civilians claim to be Masters of the Chancery.*

The Civilians say that it only appertaineth to them to be Masters of the Chancery, and assistants to the Lord Chancellour, and I have heard some of them complain as of a wrong done to them, because they are not permitted to give their judgement there as the other Judges in temporal Courts do.

To

To each Courts (that is to say) to Courts of ordinary Justice, and to this Court of Equity, the Kings of this Realm have sorted men fit for skill and education to manage the same, that is, the professors of the Law of this Land, who may be thought best to know the justice of this Land, even so to the Court of Chancery, they have assigned the Professors of the Civil Law, for that a great sort of the Titles of that Law, are Titles of Equity, as whatsoever is *Jus prætorium* or *Jus editum*, with them is matter of equity, so that they may seem best able for their skill in those Titles of which no other Law hath the like to assist the Lord Chancellour in matters of conscience, who, though he be for the most part a man chosen by the King himself out of the rest of the Judges and Sages of this Land, for his special good parts of learning and integrety above the rest, as now the person honourable is that occupyeth that place; who is, as *Tully* said of that eloquent Orator *Marcus Crassus*, *Non unus ex multis, sed unus inter omnes prope singularis*: So that they must be thought, for their great and eminent wisdom in all things appertaining to their place, able to direct themselves: Yet because it is *Divinitatis potius quam humanitatis omnium rerum habere memoriam, in nullo errare*, as one well saith; it was providently done of Princes of former ages, to joyn to these great Personages, men furnished with knowledge in these cases of conscience, Dr. *Ridley lib.* 2, 228, *Bracton.* 5. Having thus far spoken of the twelve Masters of this Court, and of these Clerks, who are as Attornies there: It now

followeth to speak of the other Clarks there also, *viz.*

## *Clark of the Crown.*

*Clark of the Crown.*

THe Clerk of the Crown in the Chancery is an Officer, who by himself or his Deputy is continually to attend the Lord Chancellour or Lord Keeper, for special matters of State by Commissions or the like, either immediately from his Majesty, or by order of his Privy Councel, as well ordinary as extraordinary (*viz.*) Commissions of Lieutenants, of Justices Errants and of Assizes, of Oyer and Terminer, Goal delivery, of the Peace, &c. with the Writs of Association and *Ded. potestat.* for taking of Oaths, also all general pardons upon grants of them at the Kings Coronation, or at Parliament, the Writs of Parliament with the names of Knights and Burgesses be to be returned into his Office; He hath the making also of all special pardons, and of Writs of Execution upon Bonds of the nature of a Stat. staple, forfeited upon the Act of 23 *H.* 8. *cap.* 6. And this was annexed to his Office in the Reign of Q. *Mary*, in consideration of his continual and chargable attendance, both which said Writs before were common for every Cursitors and every Clerk of this Court to make.

Clerk

## Clarks of the Petitbag.

THis Clerk is also an Officer in the Chancery, in which sort there be three, and the Master of the Rolls is the chief. Their Office is to Record all Returns of all Inquisitions out of every Shire; all Liveries and Ousterlemains granted in the Court of Wards, to make all patents of customes Gaugers, Comptrollers, and Almagers, all *Conge de fliers* of Bishops, all Liberates upon extents of Stat. Staple, the recovery of Recognis. forfeited, and all *Ellegit's* upon them, the Summons of the Nobility, Clergy and Burgesses to the Parliament; commissions directed to Knights and others of every Shire, for the sessing of Subsidies, Writs for the nomination of Collectors for fifteenths, and all traverses upon any Office Bill or otherwise, to receive the money due to the King for the same; consider herein the Stat. of 1. *H.* 8. *cap.* 8. & 23. *H.* 8. *cap.* 22.

*Clerks of the Petitbag, their Office.*

## Clerk of the Hamper.

HE is also an Officer in this Court, and is also called Warder of the Hamper, whose place is to receive all the money due to the Kings Majesty for the Seals of Charters, Patents, Commissions and Writs, and also Fees due to the Officers for inrolling and examining,

*Clerk of the Hamper.*

ing the same, with such like. He is tied to the Lord Chancellour or Lord Keeper in his daily attendance in the term time, and at all times of sealing, he having with him leather bags wherein are to be put all Charters, &c. and they be sealed, and those bags being sealed by the Lord Chancellours privy Seal, are to be delivered to the Controullor of the Hamper who upon his receipt of them, doth as unto the Office appertaineth.

*Fines for Original Writs.*

The course is there for every Writ of Debt of the sum of 40. l. and more, to pay the sum of 5. sh. 8. d. and for every sum of 100. Marks 6. sh. 8. d. and 10. sh. for every Writ of Plea of Land called *Præcipe quod reddat* (unless it be a Writ of right patent) if the Land be of the yearly value of 5 Marks 6. sh. 8. d. and higher *pro rata* F. N. B. 9. And if the Writ be abated he shall have a new Writ for the same Fine, if the first be entered in the Chancery. *Brac.* Fine *præ* contempt 50. But the Kings fine for it is 4. sh. *co. lib.* 7. *fol.* 10.

## *Comptrouler.*

*Comptrouler.*

HE is an Officer in this Court, attending on the Lord Chancellour or Lord Keeper dayly in the term time and days appointed for sealing: His Office is to take all things sealed from the Clerk of the Hamper, inclosed in bags of leather, as is mentioned in the said Clerks Office, and to open the bags to note the just number, and especially the natures and effect

fects of all things so received, and to enter the same into a special book with all the duties appertaining to his Majesty, and other Officers for the same, and so chargeth the Clerk of the Hamper with the same.

## Cursitors.

*Inferiour Clerks.*

ALthough these Clerks be men of less reputation then those before mentioned Clerks *de primo gradu & Magistri Cancellarij*, yet their Office is much more ancient; for to them only appertaineth the making and framing of Writs Original (so named, because that Writ doth first deduce matter into the Suit) wherefore *Bracton* saith, *Quædam Brevia formantur*, viz. *Originalia sunt de cursu*, and therefore the makers of them are called *Cursitorij*. And justice *Fitzh.* in his Preface to his N. B. saith, that Original Writs are the Rules and Principles of the Common Law; and for the antiquity of those Original Writs you may look in the Preface to the 3. d. Rep. For these Cursitors are bound by the duty of their Office to have knowledge and skill in the true form of Writs, for that the want of skill and cunning in the Clerk in legal form and Court of an Original is not a misprision amendable by the Stat. of *H. 6. cap* 12. of which matter you may read at large in many book cases and excellent proceedings in *co. lib.* 8. 159. and *Finch* 151. *b.*

And for the Fees appertaining unto them I have not any certain Instructions therein, and there-

therefore will omit them; and whatsoever they are I wish they might be increased for the better executing of their Office, but upon this condition only, that the Client might have sufficient remedy and recompence against them, when their Suits and Actions with great expences obtained, be overthrown by the occasion only of the nescience and unskilfulness of these Clerks in the legal form of framing Originals; for when the cause hath long depended in this Court, insomuch that it is ready for sentence, or rather past sentence, and stands at Execution, it cannot be but great injury to the subject after so much labour long and money spent in waste to begin his Suit again; the which is like to *Sisyphus* punishment the which is sembably true in a poor dejected Client when his case is near ended, it shall be again put upon the Anvil, as though it were still rough work, and new to begin again.

*Twelve Cursitors and they a Corporation.*

The said Cursitors are in number twelve and have allowed to them several Shires, in which they make such Original Writs as are by the subject required; the which said people are a Corporation amongst themselves: In their Writs it is truly verified, *quod forma de esse*, for their misprisions are not amendable *Co. lib. 8. 159.*

## Examiners Office.

THere be two Examiners in this Court, who examine for the parties or Witnesses produced to be examined in any suit, so that the Witnesses first take their Oaths before a Master of the Chancery. *Examiners.*

## Sergeant at Armes or Sergeant at Mace.

CConcerning the Sergeants Office of the Mace, he attendeth on the Lord Chancellour or Lord Keeper in this Court; for the means to call all men into this Court, is either by this Office or by Subpœna, and hereof a case is cited, *Co. lib 9. 98. b. Middlesex Constat quod Dominus Philippus & Domina Maria nuper Rex & Regina Angliæ, soror Domine Reginæ nunc præcharissimæ pro se heridibus & successoribus dictæ Reginæ Mariæ, &c. dederunt & concesserunt Marco Steward. gen. officium servient. eorund. nuper Regis & Reginæ Mariæ ad arma attend. super Cancellarium Angl. pro tempore existend, &c. Habend. & gaudend. Officium illud pro termino vitæ suæ*, with all Fees thereunto belonging or appertaining, and with one certain Fee of 12. d. *per diem.* And *Wray* chief Justice, and all the Court said that for so much as the Chancellour or Keeper of the great Seal of *England* is but the

the Kings Deputy *Durante beneplacito*, therefore the said service done by the said Serjeant at Arms to the Deputy of the King, is in Law done to the King himself.

## Clerk of the Faculties.

*Clerk of the Faculties,*

COncerning this Clerk it is provided by the Stat. 26. H. 8. *cap.* 21. Intitled the Exoneration of the Kings subjects from exactions heretofore paid, and Impositions to the See of *Rome*, &c. *viz.* That no manner of dispensations, Licence, Faculties or other Precepts or Writings hereafter to be granted to any person or persons by vertue or authority of this Act by the said Archbishop, &c. until the same Licence, &c. be first confirmed by your Highness, you Heirs or Successors, under the great Seal, and inrolled in the Chancery, in a Roll by a Clerk to be appointed for the same purpose, &c. And in the end of the same Statute amongst the Fees to be taken and divided is set down particularly how much shall be taken by the Clerk for the inrolment of such Licences; &c.

## Clerk of the Presentations.

*Clerk of the Presentations,*

COncerning his Office we read that the Chancellour of *England* by vertue of his Office shall present to all the Kings Churches

Benefices which be under the yearly value of twenty Marks, and be in the Kings gift in the right of the Crown: But if the King have them by another collateral Title, the Chancellour shall not have them: These presentments must pass under the great Seal of *England*, *Plow.* 528. *F. N. B* 37 *K* But 22. *E.* 4. 8. doth mention that it belongs to the Chancellour to present to all the Kings Churches under the yearly value of forty Marks: And I have heard the Chancellours authority in this behalf is enlarged by the Kings several Grants, and Letters Patents. It also appertaineth to the Chancellour of *England* to visit all the Hospitals which be of the Kings Foundation, or of any of his Progenitors, and so also the free Chappels of the King or of his Predecessors: no Ordinary shall visit them but only the Chancellour, *F. N. B.* 42. *a.*

## *Clerk of the Appeals.*

THis Clerk is by the Stat. of 25. *H* 8. *cap* 9, by which *(inter al.)* it was enacted that for lack of Justice at or in any of the Courts of the Archbishops of this Realm, or in any of the Kings Dominions, it shall be lawfull for the parties grieved to appeal to the Kings Court of Chancery, & that upon every such appeal, a Commission shall be directed under the great Seal, to such persons as shall be named by the Kings Highness, his Heirs or Successors, even like as in case of an Appeal from the Admiral Court,

Court, to hear and definitively to determin such Appeals.

## The Clerk for inroling Letters Patents.

*All the Grants and Patents of the King must be recorded.*

THis is of an Office by order of the common Law, for though it be not expressed in any Stat. that the Kings Patents shall be inrolled, yet so much is implyed for the Kings benefit, as is said before in the Title of the Master of the Rolls, for his Grants must appear by Record, which must remain in his custody, *viz.* in the Court; And in divers Statutes mention is made that Exemplifications shall be made, which cannot be unless the Patents were inrolled.

*Crompton Jurisd. Courts, title Exchequer.*

## Certain cases wherein Clerks of the Chancery and their Attendants may have certain priviledges, and where not.

*Priviledges of the Clerks of Chancery.*

IF the Lord Chancellour or any of his servants, or a Clerk of the Chancery, or any of his servants be arrested upon an Action of Debt or Trespass, &c. in *London* or elsewhere, and thereupon be sued in *London* before the Mayor or Sheriff there; they may have a Supersedeas out of the Chancery directed to the Mayor, &c. to surcease and will the party to sue in Chancery, if he find it to

be

be expedient for him, and therefore in the Regiſter 91. there are divers Writs, and one of them doth mention that this cuſtome and priviledge was confirmed by authority of Parliament, *Anno* 18. *E.* 3.

If any Officer or Clerk of this Court be arreſted in *London*, or other place, he ſhall have a Writ of priviledge with a Superſedeas in it, and ſhall command the Plaintiff *quod ſequatur in Curia ubi*, &c. *ſi voluerit*, &c. where he may have remedy in his ſuit as well as elſewhere, in which caſe no *procedendo* ſhall be awarded to an inferiour Court, but otherwiſe it is where the party arreſted had priviledge by reaſon of a Suit depending in the Superiour Court, for that is the only cauſe of this priviledge, *per omnes Juſtic. Dyer* 287. 37 *H.* 6. 13. One of the Clerks of the Chancery was ſued in the Common Pleas in an Action of Debt, and the proceſs continued to the Exigent, and the Defendant ſued a Superſedeas to the Sheriff *quia improvide*, &c. And after he ſued a Writ of priviledge forth of the Chancery to the Juſtices there, reciting the priviledge of the Chancery, and requiring the Juſtices to ſurceaſe, and it was well debated whether he ſhould have the priviledge or no, and at laſt the priviledge was diſallowed, and the Clerk of the Chancery was forced to anſwer, for the Court was lawfully ſeized of the plea by the Act of the Defendant himſelf, for inſomuch as he did ſue the Superſedeas *quia improvide*, &c. he hath affirmed the Juriſdiction of the Court for every Superſedeas *quia improvide*, &c. and recite an appearance in Court of the Defendant by Attor-

ney, and shew his name whereby it is his own default; But if he had not sued forth that Writ, although the Exigent had gone forth, yet the priviledge hath been allowed, and thereof are divers Presidents, and then after the priviledge cometh to the Justices, they ought to make to the Sheriff a special Supersedeas as of outlary, reciting the Writs of priviledge, *Dyer* 33. b

*Supersedeas of priviledge when not allowed.*

In Exchequer Chamber, *Illingsworth Ch. Baron* said to the Justices, That *Tho. Young* Justice sued a Bill against the Clerk of the Hamper in the Exchequer upon his account, the Clerk the last Term did imparl there till this Term, and now a Supersedeas was sent unto us reciting that he was a Clerk of the Chancery and ought not elsewhere to be sued, and therefore commanded that he should surcease, *&c.* And the *Ch* Baron asked them if this Supersedeas were allowable, forasmuch as he hath affirmed the Jurisdiction, *&c,* And all the Justices did hold it, without question that when he did imparl, and the Court was seized of the Plea, he should never after disaffirm it, for all are the Kings Courts, and have been time out of mind, insomuch as no man can say which is the most ancient; And also they did hold clearly that if he had not imparled, yet the Supersedeas should not be allowed, for every Accountant ought to be attendant and present here, and where he is present there it is convenient he should be sued; Furthermore it is for the Kings advantage that he be sued in the Exchequer, for if he should be driven to answer elsewhere, then he could not attend

here

here to pay the King; Likewise the Accomptant may have here a Bill against his Debtor to hasten the Kings present payment; and if an Accomptant in the Exchequer should be sued in the Common Pleas, he may send a Supersedeas to them to surcease, or if he sued in the Kings Bench those of the Exchequer will shew the Record that he is an accomptant, for they may not make a Supersedeas to the King, and the Plea there is holden *coram Rege*, &c. and thereupon he shall be dismissed, for he ought to be sued in the Exchequer. And *Fairfax Ch.* Justice said, that this Suit of Justice *Young* is as Assignee of the King by his Patent to receive this money of the Clerk of the Hamper here upon his account, And as no Supersedeas lyeth against the Kings Assignee, &c. And Justice *Young* himself said; What if the Chancellour will command me upon a pain not to sue him? thereupon *Billing* answered, You are not bound to obey him, for such commandment is against the Law.

*In what case an Officer of the Chancery being imprisoned may be discharged by the Chancery, and in what not.*

If a necessary Officer of the Court, as Register, Master of the Chancery, &c. be in prison, the Chancellour may enlarge him, and thereupon *Billing* answered, but if an Officer be in Execution for Debt, Damages, or the like, he shall have no priviledge, for then the party is without remedy, if that he were once at large, &c. 2 Ed. 4. *Crompt. Jurisd. del Courts* 48. 161.

*An office in the Chancery not extendable upon a Statute, Judgment, &c. and why.*

The profits of the office of any Officer belonging to this Court shall not be extended upon any Recog. Stat. &c. for that a man shall never have any thing extended upon execution,

unless he may grant and assign over the same thing because he is an Officer unto the Court to do the business and service thereof, and not his own business, and also it is an office of trust which is not communicable to a stranger, as an Officer to be carver at my Table which cannot be assigned.

*The wife of a privileged person not privileged, nor be in her right.*

*Paul Clark* of the Crown-office in the Chancery, and his wife as Executrix of her first husband were sued in the Common Pleas for debt, and he brought a Writ of priviledge for him and his wife, *& non allocatur*, because she is not impleadable there, nor her attendance requisite in Chancery; But it is otherwise if the husband were impleaded alone in the Common Pleas, and he coming into the Court with his wife to defend the Suit, and they are both arrested, in that case they should have priviledge, *Dyer* 377.

*A servant of a servant shall be priviledged.*

If the husband have priviledge in the Chancery it will not serve for the Wife, and yet a servant of a servant shall have priviledge, as a servant mediate to the Chancellour, but the wife is not a proper servant, 35 *H.* 6. 4.

It is a common case in our Books, that in an Action of Debt brought joyntly against two, where one of them hath cause of priviledge, his priviledge now shall not be allowed to him, for where the common Law and a private custome and priviledge meet together, the common Law shall be preferred, 9 *Ed* 4. 14. and note if the priviledged person of this Court will untruly surmise that one who is impleaded in another Court is his servant, and thereupon procure a Supersedeas, whereby the Plaintiff in that

that Court is discharged, an Action on the case will lye against such an Officer.

Note that if a Clerk of this Court do sue an Attachment of priviledge against another, by which he is condemned, that a *Capias ad satisfac.* shall not lye against the Defendant, because no *Cap.* or process of outlawry doth lye upon such a Suit of Attachment, *sed quære*; And therefore if a man be condemned upon a Recognisance, execution upon his body by a *Capias* doth not lye. *Dyer* 192. & 306.

*A Capias ad satisfaciend. lyeth not upon an Attachment of priviledge.*

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## *Divers Observations concerning the Chancery.*

THis Court is *Officina justitiæ & æquitatis*, for the store of things and causes therein of divers natures, and those of greatest price; Also the Chancery is said to have two powers, *viz.* ordinary and absolute, *Stamf. prog.* 65. *b.*

*Chancery hath two powers.*

The Chancellour may hold plea as well *extra terminum* as *infra*, in matters concerning the one jurisdiction and the other, *F. N. B.* 26. 1. *Broo. Jurisd.* 106. for if the adjournment of the Term be, the Chancery shall not be adjourned, for this Court is ever open, 4. E. 4. 2. for a man may have process out of this Court at any time, *Crompton's Jurisd. del Courts* 42. In this Court by the Chancellour are all the Kings Patents and Commissions sealed with the great Seal; Into this Court Offices found by the Escheator, *Virtute brevis*, are returnable, 4. Ed.

4. 14. *Stamf. prog.* 70 *b.* and alſo may thoſe which be found *virtute officij*, *Co. lib.* 1. 42 *b.* Out of the Court iſſue, *&c. Sci fac.* to revoke the Kings Letters Patents, and here is traverſe to be made to any ſuch Offices as the cauſe ſhall require; here are the Widdows of the Kings Tenants to be endowed, and many other caſes there are, which were too long for this Treatiſe to rehearſe.

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## *Warrants for the great Seal.*

*The form of paſſing of Letters Patents.*

COncerning the Kings Letters Patents this is the courſe, *viz.* If they paſs by Billſigned *per ipſum Regem*, then the Bill ſigned remaineth with the Lord Chancellour for his Warrant; And when it paſſeth by Bill ſigned and privy Seal alſo, then the privy Seal remaineth with the Lord Chancellour or Lord Keeper, and the Bill ſigned remaineth with the Clerk of the Signet, and the Lord privy Seal hath an abſtract of it for to make the privy Seal by, and then the Letters Patents are ſubſcribed *per breve de privato ſigillo*: And if *per authoritatem Parliamenti* be added, then it muſt paſs according to the Stat. 27. *H.* 8. *c.* 11. And when the King ſigneth the Patents himſelf, the ſignature and great Seal do paſs together at one and the ſame time, and then it is ſubſcribed *per ipſum Regem & totum concilium in Parliamento*, or to the ſame effect, *Co. lib.* 8. 18. *b.*

Every Warrant ſent by the King to the Lord Chan-

Chancellour at the day of the delivery of the ſame, the Chancellour ſhall do Letters Patents to be made upon the Warrant bearing date the day of the ſame delivery and not before in any wiſe, and if any Letters Patents be made from henceforth to the contrary, they ſhall be void by the ſtat. of 8 *H* 6. *cap.* 1. and for the full expoſition of the Stat. ſo *Plow.* 491. & *Dyer* 133. *b.*

Note that by the common Law no Grant of any Land is available from the King, or pleadable but under the great Seal of *England*, *Coo. lib.* 2. 26. But there are three remedies to have it under the great Seal, as the cauſe ſhall require. Firſt, He may have a duplicate at the ſealing of the Letters Patents. Secondly, If they be loſt, and afterwards found again, then they ſhall be returned again into the Chancery to be cancelled. Thirdly, The party may have an exemplication upon the inrolment. *No Lands paſs from the King, but under the great Seal.*

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## *Exemplification and Conſtat, and their differences.*

AND becauſe the Stat. of 6 *Ed* 6. *cap.* 4. and 13 *Eliz. cap.* 6. do extend to make an exemplification and conſtat of Letters Patents to be pleadable; It is requiſite to know the diverſity between an Exemplification and a Conſtat, and the ſignification of other words by which Letters Patents are uſually named, *viz. Inſpeximus*, *Innoteſcimus*, *& Videmus*; An Exemplification being in this form, *Jacobus Dei gratia*, &c. *Exemplification and Conſtat their difference.*

*Omnibus*, &c. *Inspeximus irrotulamentum quarundam Litterarum patent*, &c. And it doth recite the Record *verbatim*, and concludes with this form, *Nos tenorem Litterar. patent. prædict.* &c. *ad requisitionem*, A. B. *duximus exemplificand. per presentes*, &c. *In cujus*, &c. And it is called an *Inspeximus*, because it beginneth after the title of the King, with *Inspeximus*, and it is called an exemplification *à re ipsa*, because of the Record by which it is exemplified, as it doth appear by the end of it, *Duximus exemplificand. per presentes*; And the *Constat* doth begin after the title of the King, *viz. Constat nobis per inspexionem rotul. Cancellariæ nostræ quod Dominus Henricus nuper Rex*, &c. *litteras suos fieri fecit patentes in hæc verba*, &c *Henricus Dei gratia*, &c. and recites all the Letters Patents *verbatim*, *Nos autem quia litteræ patentes prænd. sunt casualiter amissæ sicut* A. B. *nobis in Cancellaria nostra personaliter constitutus Sacramentum præstitit corporale, & quod ipse brev. præd. si eas in posterum reperiri contingerit nobis in Cancellariam nostram præd. præstiterit cancellan. tenorem irrotulamenti ad requisitionem ejus duximus exemplificand. per præsentes*, &c. And it is called a *Constat*, but nothing is exemplified but the tenour of the Record. Also by the premisses it may appear, that a man cannot have a *Constat* without Affidavit as by the form of the *Constat* it appeareth; But an *inspeximus* may be granted without Affidavit; and for the antiquity of the *inspeximus* or exemplification read, *Co. lib.* 5. 54. and *lib.* 8. 28. *b.* An *innotescimus* and *videmus* be all one, they are alwayes of Charters of Feoffment, or of some other

ther instrument which is not of Record: and the *innotescimus* doth begin in this form, *Rex omnibus &c. inspeximus quoddam scriptum factum per* A. B. *factum* B. C. *sigillo ipsius* A. B. *sigillat (ut dicitur) in hec verba Sciant præsentes* &c. and reciteth the instrument *verbatim, & hoc omnibus quorum interest aut interesse poterit in præmissis innotescimus per præsentes. In cujus,* &c. And it is called *innotescimus* in the end of it, and sometimes it doth commence *Videmus quoddam scriptum,* &c. and then it is called *Videmus ibidem.*

Innotescimus & videmus *all one.*

*Nota,* It is a received opinion, That if the Kings Letters Patents be eaten with Rats, or lained by any means, so that the Patentee cannot have a *Constat*, yet he may have exemplification upon the Record, but a *Constat* is never had but upon the losing of the Patents.

*A Constat always upon losing of the Patent.*

*Vide Dyer 179. b. La case del Clerk del Hamper per H. 8. al St Rase Sadler* and *Fo. Hales pro term' vitæ eor'* &c. and there we may see the nature and force of a duplicate, which hath no force when the original Patents is cancelled, because the Chancellour makes it at his pleasure without any Warrant from the King.

*The force of a Duplicate.*

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## *Writs of Chancery.*

THere are three kind of Writs in the Chancery. 1. Writs of course. 2. Writs of Grace. 3. Of Form. 1. Writs of Course be all Originals, as of Debt, Trespass, and such as are returnable at common Law.

*Three sorts of Writs of Course, of Grace, and of Form.*

Law. 2. Writs of grace be Subpœnas, especially *Supplicavit*, *Certiorari super causam*, *Habeas corpus*, *Procedendo*, *Ne exeat regnum*, Injunctions and such like. 3. Writs of form, as *Dedimus clausit extremum mandamus*, &c. *Seire facias*, *Elegit* and a *Ducens tecum*, which is to be granted where the Defendant doth confess Evidences, Money, Plate, *&c.* claiming no property in it, nor calleth any person to interplead for it.

In the Chancery is the Original or *Initium*, the middle or *medium*, and the building or *finis* of all Suits. 1. *Initium*, *viz.* all original Writs at the common Law, Letters Patent, *&c.* 2. *Medium sive remedium* after the Process began where Writs of *Procedendo in loquela quærela vel in causa ad judicium conceduntur*. 3. *Finis*, viz. *ultimam refugium sive remedium*, after Judgement had for the Plaintiff, *viz.* Writs *de executione Judicij alicui nullatenus deneganter*, and Writs of Error for the Defendant, special pardons of Grace, and common pardons by Parliament, to relieve many that are grieved and vexed.

*Commencements of Suits.* All Commencements of Suits are by Writs original out of Chancery under the great Seal *Teste Rege* into the Kings-Bench, Common-Pleas, or into the Chancery it self, as the cause shall require, for until the return of the Writ the Court is not said to be possessed, neither can those Courts hold Plea, but upon an original returned before them, and therfore upon an original returned carde, *i. e. Adeò tarde venit quod executionem inde fatere non potui*; An *alias* and *plures* shall issue out of the Court where

here the original is return'd, *Teste* the chief Justice, for by the return the Court is possessed but if no return be made then the *Alias* and *Pluras* shall also issue out of the Chancery, *Teste Rege.*

Original Writs be so called, because they first deduce the matter into Suit, and thereby the Sheriff is commanded, that if the Plaintiff find to him pledges (that is, some men to be his Sureties) that he will prosecute the Suit, then to execute the Process according to the tenour of the Writ against the Defendant to be before the Justices at a certain day to answer the Plaintiff; And so is the form of every original, *Si querens fecerit te securum de clamore sua prosequendo, &c. Plegij prosequendo Johannes Do. & Richardus Ro.* But in these dayes the entry of the Pledges, is but *pro forma tantum*, and yet for default of entring them it is Error. And note that if any Attorney of the Kings-Bench or Common-Pleas, or any Officer or Clerk of the Chancery do sue any stranger in their proper Court by Attachment of priviledge, that although these words, *viz. Si querens te fecerit securum de clamore sua prosequendo*, &c. be not in such Writs of Attachment, yet such an entry thereof must be also made in the end of the Count, *Dyer* 288. *a.*

*Original Writs.*

*Plegij de prosequendo in Writs of Attachment of priviledge not entred, yet may be allowed.*

The original Writ ought to be true Latine, for if it be *hab. hos breve pro hoc breve*, 9 H. 7. 16. or *uxorij in a præcipe quod reddat*, by a woman where it ought to be *uxori*, &c, the Writ shall abate.

*False Latine abates an original Writ.*

The original Writ must also be formal, *viz.* the general, to be put before the special, the whole

*Original Writs must be formal.*

whole before the moyety or parts, *magis dignum* before *minus dignum*, &c. *Finch.* 53.

*Wherein the Chancery is a Court of Record.*

The Chancery is a Court of Record in all matters there treated of, appertaining to the common Law, and wherein the proceedings are, and must be according to the Chancellors ordinary power, as in case of repealing the Kings Letters Patents by *Scire facias*, or upon Pleas of Debt, by Attachment of Priviledge in the Court, and such a Plea discussed, then is a good Bar at the common Law, for upon those Writs of Error lie in the Parliament, 37 *H.* 6. 14. *b. Prisot.* 8 *E.* 4. 6. by all the Justices; And if matter of conscience arises upon those causes in their proceedings, the Chancery cannot adjudge them according to conscience, but according to common Law; and for matter of conscience the Defendant must prefer his English-Bill to the Chancellor for his absolute Authority, and these two Authorities cannot be mishmasht together and be miscellaneous, for that would breed confusion. *Quando duo jura concurrunt in una persona, aequum est, ac si essent in diversis*; *Vide* 11 *E* 4. 9. *b.*

Perjury is punishable by the Statute of 5. *Eliz. cap.* 9. And a man would have brought his English-Bill in Chancery for Perjury committed there, *contra formam Statuti*, &c. but it was resolved, that it was not good for the reason given, *Dyer* 288. *a.* for if the Chancery will examine Perjury committed in the Court, as it may by the Statute, then it ought to be by a Latine Bill, and pleadable in Latine, and issue to be joyned there, but to be tried in *B. R.* &c.

Upon

Upon the like reason are divers cases in the common Law, *viz.* A man hath cause of Action of certain Lands, part whereof lyeth within the jurisdiction of the Sheriff of a Shire, and the rest within the Cinque-ports, the Plaintiff in this case may not have one Writ for all, because of the several qualities and jurisdictions, but he must have one Writ directed to the Sheriff for that part within his Bailywick, and another to the Guardian of the Cinque-ports, for that part within his franchize.

A man doth commence his Action against the Defendant *in Custodia Marescalli*, &c. the Defendant, hanging that Plea, is committed to the Fleet in Execution upon a condemnation in the common Pleas or Exchequer, the Plaintiff in *B. R.* cannot pray the Defendant (being condemned) may remain in the Fleet in Execution for him, for having once chosen his prison (*viz.* the Kings-Bench) he cannot afterward alter it, no more then where process is directed to the Coroners, it shall not afterward be directed to the Sheriff, although there be a change of the Sheriffs, *Dyer* 297. *a, b.* Even so if the Plaintiff bring a Writ which is formed upon the Statute-Law, he must have a Judgement pursuing his original, which is the foundation of this Suit, and not a Judgement upon the common Law, *Co. l.* 74. *a.*

*J. S.* acknowledged a Recognusance in Chancery to *J. Ognal* of 200. l. upon which Recognusance *J. O.* did sue out a *Scire facias*, and upon a Nichils returned; Judgement was given, *Idem consideratum est per Curiam quod pred.*

*O. recuperet versus* J. S. 20 *l.* and that the said *O.* should have Execution against him; upon which *O.* did sue a *Levari facias*, and thereupon was returned that *J. S.* had nothing, and thereupon the Court did award a *Capias ad faciendum* by force, whereof the Sheriff did arrest the body of *J. S.* and after the prisoner did escape, and it was resolved *per totum curiam*, that the awarding of the *Capias ad satisfaciendum* was erroneous, for by the Law the Cognusor was not liable to the Execution, so that his Lands, Goods, or Chattels are only liable either by *Fieri facias*, or *Elegit* by the Statute of *Westminster* 2 *cap.* 18. and the tenour of the Recognisance doth express, that it is to be levied *De bonis & catallis terris & tenementis J. S. adquorumcunque manus devenerint*, &c. and therefore no *Capias ad satisfaciendum* doth lie in the case, because no process of Outlawry in the Court of Chancery doth lie upon the original, *Dyer* 306. *Puttenhams* case.

Note, That it may appear by the premisses that the saying of the Chancellour, 4 *H.* 7. *Quod nullus recedat à Curia Cancellariæ sine remedio*, is erroneous; for *Fineaux* ch. Justice thereupon answered him, Sr. *Si nullus recedat sine remedio, ergo nullus indiget esse confessus*. But Sir, the Law of the Land is for many things, and many things are to be sued in this Court which be not remedial at the common Law; But the Chancellour 8 *E.* 4. 5, 6. said more reasonably, confessing that in cases where Statutes do give a title of right unto a man, we are bound to obey it.

*Where a Statute gives a title of right the Chancellour ought to obey it.*

*Proceedings*

## *Proceedings against a priviledged Person.*

1. A Declaration against a priviledged man for Debt, or any thing whereof the Court holdeth Plea, is delivered to one of the six Clarks, whom the Plaintiff maketh his Attorney, and he hereupon giveth a day (as it is commonly termed) which is a week, *viz.* (the whole next return) to the Defendant to answer, which day is entred in the six Clarks cost-book in this manner; *Roberts cont. Johnson, Dies usque xvo Michaelis in placito privilegii.*

2. Day being thus given, the Declaration under the Attorneys hand is sent over to the petty Bag by one of the said Attorneys Clerks, which Declaration is briefly entred by one of the Clerks there, and likewise the day given to the Defendant to answer in a Roll there, which is called *Rotulum Remembranc' parvæ bagæ*; At which day by course of the common Law; if the Defendant plead not, he is fore-judged the Court, but the course of the Chancery hath been of late to allow the Defendant a day of imparlance, that is, day till the next return after the return given him to answer, as aforesaid, which is in this manner.

3. The Defendant retaineth one other of the six Clarks, and he imparleth for him, which is done in the six Clarks cost-book in this manner, *Roberts con. Johnson li. Co. usque Pref. Mich.*

at

at wh ch day it is ſent over to the petty Bag to be entred in the aforeſaid Roll next under the ſaid Declaration.

4. The ſaid day of imparlance being paſt, another day, *viz.* commonly five dayes of a week (which is commonly called a peremptory day) is given by the Plaintiffs Attorney, and entred in the petty Bag, as aforeſaid to the Defendant to plead, or elſe Judgement is to be entred againſt the Defendant.

5. If the Defendant plead, his Plea is delivered by his Attorney to the Plaintiffs Attorney, then if the Plaintiff will proceed to a triall, he is to joyn up the iſſue (if he may, for in ſome caſes he cannot) or elſe the Plaintiff is to reply and to give the Defendant a day, *viz.* a whole return to joyn up Iſſue, which is given and entred as the day to anſwer, *Articulo* 1. And if the Defendant by that day joyn not up the Iſſue, Judgement is entred by *Nihil dicit*: It is to be noted that after a peremptory day given the Defendant cannot pray Oyer of the bond and condition, or ſuch like, as of late is uſed for a meer delay.

6. But if Iſſue be joyned up either by the Plaintiff or Defendant then is the Record made up, and the ſame with a *Venire facias* is ſent into the Kings Bench to be tried as an Action there at Iſſue, and upon Judgement there, Execution is thereupon there awarded.

7. But if the Defendant refuſe or neglect to imparle at the day given him to anſwer, or to plead (for he may plead at that day if he will) then is Judgement entred againſt him and Execution awarded.

Upon

Upon Judgement either by default or *Nihil dicit*, some of these Writs of Execution are awarded; If for Debt the Plaintiff may have an *Elegit* by *Westminster*, 2 *cap.* 18. or else a *Levari facias*, or *Fieri facias*; And if the Plaintiff cannot levy his Debt and Damages then shall he have a *Capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgement being satisfied, the Plaintiff by himself or his Attorney (if the Defendant desireth it) doth acknowledge satisfaction upon the judgement in the petty Bag.

It is to be noted, That whatsoever day is given by any of the six Clarks, and by them entred in their Book, it worketh nothing if the same be not entred in the petty Bag: *ut in Articulo 2.*

## *For a priviledged Person.*

THe Defendant being arrested by an Attachment of priviledge at the Suit of a priviledged man, retaineth one of the six Clarks to be his Attorney; but he may not enter his appearance in the Register for discharge of his Bond entred into, to the Sheriff for his appearance in the Chancery; neither can the Defendant be said to have appeared until he hath put in Bail to the Plaintiffs Action, according to the course of the Court, which is *Ad comparendum de die in diem quousque placitū*

*inde determinetur*, to satisfie the Plaintiff all such summes of money as the Plaintiff shall recover against him by reason of this Suit; th n one priviledged man putteth in his Declaration, and the proceedings thereupon are as before against the priviledged man.

By the course of the Court the Defendant is to put in four Subsidy-men, or sufficient Sureties be the Action never so small, *ut patet per decretum pro privileg. fact. Mercer. 8. Die Novemb. in Cancellar. A. 23. Eliz. inter Archibald. & Barrel*, wherein the Defendant is bound in 200. l. the summe of the Action, and every Surety in 100. l. If Judgement be given for a priviledged man in this Court, he may if he will take out Execution against the Defendant, as before *Articulo* 8. But if he will not, then may he take out a *Scire facias* against the Defendant and his Manucaptours upon the Bail; Whereupon if Judgement be had upon the said *Scire facias* in the Chancery, Execution is awarded as in the former Actions; but if upon issue joyned and sent into the Kings Bench, and upon a tryal there, Judgement be given, then is Execution there awarded, *ut in Articulo 6.* And upon satisfaction of the Debt and Damages the Bail is to be discharged, *ut in Articulo 9.*

If either the Plaintiff or Defendant upon a Declaration of priviledge or *Scire facias* demur in the Chancery, the Demurrer being joyned, a day is set down by the Lord Keeper for arguing thereof before him, and if upon Argument it fall out to be a *Respondeas ouster*, then Judgement is entred thereupon; And if it be

be against the Defendant then Execution is awarded. And if against the Plaintiff, then it is *Quod quær. nil capiat per brev. vel per narationem*; But if it be a *Respondeas ultra*, then is the Defendant to pay cost, and a day is given for him peremptorily to plead or Judgement to be entered, *&c.*

## *Upon a Recognusance.*

VPon a Recognusance acknowledged in the Chancery, it is used to sue two *Scire facias*'s into *Middlesex* (if the Conusor be living) where the Chancery is, and upon two Nichils return upon the said *Scire facias* (which equals a summons) day is given by one of the six Clarks retained by the Plaintiff in the *Scire facias* and day entred in the petty Bag, *ut Articulo* 2. And if the Defendant appear not, judgement is then entred, and Execution awarded against him, *ut Articulo* 8. And if the Defendant appear, then the proceedings *ut prop. infra.* But if the Conusor be dead, then one *Scire facias* is awarded to the Sheriff of *Middlesex* against him, who thereupon returneth a *Mortuus*, and upon that return *Scire facias* are awarded against the Heir of the Conusor, and the ter-tenants into all Counties, where the Conusor hath any Land *Tempore Recognitionis vel unquam postea*, who must be summoned, and upon return thereof

day is given against them, and the *Scieri facias* and day entred in the petty Bag, *ut Articulo prop supra*. And if they make default of appearance, judgement is entred by default, *ut supra Articulo* 7, and 8. But if the Defendants appear, then are they to plead, and the proceedings thereupon are as upon a Declaration.

If an Infant acknowledge a Statute or Recognusance, if he will avoid it he cometh into Court in Term time, and in the Vacation to the Lord Keeper, and is inspected during his minority, and then or before he bringeth his *Scire facias*, and if the Conuzee do appear he may plead if he will, but the Plaintiff is put to prove his nonage either by Witnesses in Court or otherwise.

## *Traverse of Office and* Monstrans de droit.

VPon an Office found after the death of the Kings Tenant, the Tenant or any other grieved thereby upon a Bill of complaint exhibited into the Court of Wards, is licensed to traverse or to sue a *Monstrans de droit*, which being drawn and ingrossed is delivered into the petty bag, which travers or *Monstrans de droit* his Majesties Attorney General often times upon sight of Evidence doth confess to be true, and thereupon an *Ouster le mayne* is awarded, &c.

or else he will plead thereunto, and thereupon issue is joyned, and a Record of the whole, and a *Venire facias* thereupon is sent into the Kings Bench, *ut Articulo 6.*

## Habeas Corpus ad satisfaciendum.

IF *A. B.* be prisoner in the Fleet or any other prison, and *C.D.* hath a Judgement in Chancery, or a Statute-staple to charge him with, he shall have a *Habeas Corpus* mentioning the Judgement or Statute returnable in the Chancery, by vertue whereof he shall be brought into the Court, or before the Lord Keeper, and upon showing forth the Statute or Record of the Judgement, the prisoner shall be committed to the Fleet in Execution also for the same if he cannot show good cause to the contrary, as a Release, *&c.* All which is entred in the petty-Bag.

## Audita querela super *Bail.*

IF a man be taken in Execution upon a Statute-staple or Judgement in the Chancery and have good cause to avoid the Execution, the course is by petition to signifie to the Lord

Keeper his cause, and for the more caution the Lord Chancellour Viscount *Bracley* would upon the Petition be certified under the hands of the Plaintiffs Councel, of good Account of the Law in that point specified in the Peti-
12 H. 6. cap. 10. tion, and thereupon the Lord Keeper doth appoint some Master of the Chancery to take sufficient Bayl according to the course of the Court, of which he ought to have great care, for that the Statute and Judgement are thereby avoided, and the Plaintiff discharged, so that if it fall out upon tryal against the Plaintiff, the Defendants hath no remedy, but against the Bail which if they be insufficient the Defendant loseth his Debt, as hath been oftentime seen.

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## *Statute-staple.*

THe Statute-staple is acknowledged before the chief Justices of either Bench, or in their circuits or absence before the Mayor of the Staple of *Westminster*, and the Recorder of *London* 23 H. 8. *cap.* 6. And the manner of suing Execution is thus, The Statute being forfeited the Conuzee bringeth his Statute to the Clerk of the Statutes who endorseth the same on the back of the Statute, *Certificat in Cancellar' tali die & anno per T. H. Clericū' Stat.* &c. and maketh Certificat thereof to the Lord Keeper, who thereupon awardeth Extent,

which

which being executed and returned into the petty Bag, and the Statute filed there a *Liberate* is thereupon awarded, which being also executed, is there likewise filed if the Conuzee pleaseth, but it is not of necessity.

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FINIS.

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# CHOYCE CASES IN CHANCERY.

*Legacies devised out of land upon condition.*

IN a Case between *Pretty* and *Porter*. It fell out that the Ancestor of *Michael Pretty* the Defendant had devised Land to his eldest Son, on condition he should pay Legacies of 40 l. to his Sisters at the age of 21 years, or else the Land to remain to the said Legatees.

The eldest son enjoyed always the land, and *Porter* having bought the extent of a Statute, which the said Heir had acknowledged. *Pretty* entered on him after 34 years possession, supposing the condition to be broken for non payment of the Legacies: But proof being made of payment, not precisely, but by acquittances; The Lord Chancellor ordered, that the possession so long continued, should not be stirred upon pretences, but decreed it with the Plaintiff. *Et ita per* Coke Attorney, That upon such a condition the money must be demanded at the instant of coming to 21 years of age: And by the

the Lord Chancellour that the condition was void, for the Heir should have entred; but yet Judgement was given in the Kings Bench, that the Legatees should have the Lands as being a limitation, and not a condition, 5 *Febr.* 1. *Jacobi.*

*Examination of Witnesses in causes to be tried in* Ireland.

In a Case between Sir *Robert Digby* Plaintiff, and the Earl of *Kildare* Defendant, for Lands in *Ireland*, the Defendant demurred, and upon reference to *Gawdy* and *Warberton* Justices, they reported that Witnesses might be examined upon the Bill in perpetual memory to be sent close over into *Ireland*, and there to be used as the Judges of that Court who should

*Jurisdiction of* Ireland *overruled.*

have Conusance of the matter in *Ireland* would appoint: and the Lord Chancellour said, if the matter had originally begun in *Ireland*, by Commission under the great Seal of *Ireland*, Witnesses appertaining to that cause might have been examined in *England*. *Philips* being of Councel with the Defendant, moved that they sought to prove forgery, and then if the Witnesses were examined here and committed perjury, they were not punishable here; for it was out of the Statute of 5 *Eliz.* But the Lord Chancellor said they were punishable. *Sed non dixit quomodo* 24 *April. An.* 1603.

*A Steward to Judge at Common Law of Copyhold-cases, &c. the Lord of the Manor is Chancellour there.*

In a Case of two Copyholders of the Manor of *Byfleet in Surrey*, one claimed by an ancient title against which the possession had gone since 5 *of E.* 6. The Lord Chancellor would not retain it in Chancery, but bade them try it in the Court of the Mannor; and that if need were, a learned Steward or assistant to him should be appointed by this Court. And that

no

a Writ of false Judgement lay of a Coppy-hold case in a Mannor, because from a Steward they might appeal to the Lord as a Chancellor, 3. *April.* 1605.

In *Bevels* case *versus* Mannors & *uxorem* being in remainder intail with Fee expectant, suing for the deed of Intail which was in the Lady *Bevils* hands being Tenant in Joynture, it was doubted whether upon conveyance by fine the Deed should go to *cestuy* use or the Feoffee. And by the Attorney strongly to the Feoffee. But the Lord Chancellour was contrary, and at last ordered that the Heir at common Law, *viz.* *Bevel* should have all Deeds whereby he might vouchor rebut, but not of warranties against himself for maintenance of the Joynture, and it appeared not whether the Joynture were life or in Fee, 30. *Aprilis* 1605. Bevils *Case of Deeds.*

Note, that the Lord Chancellour said that answers be good to common intent of things being not in the Defendants knowledge alone but if publikely done, ought not to be cavelled by Councel, who thereby delay their Clients causes; But if it be of things secret, it is otherwise, 30 *Aprilis* 1605. *Answers good to common intent, but things secret not to pass doubtful.*

In Case of an occupant, as house and land granted to *J. S.* for term of the life for three of his Sons for one rent, they that have the possession of the house must have the occupancy of the land, for otherwise every servant that were digging should have a several peice, and *pedis positio* is not sufficient, but there must be a claim also published to hold it as occupant, 30 *Aprilis* 1605. *Case of an occupancy.*

In

*Decree not signed, now ordered by the L. Chan. to be done by a day.*

In a cause between *Pope* and *Worth*; the cause was heard and ordered for the Defendant, who sued out an *Executione ordinis*, but made not use the decree the next term, whereupon the Plaintiff put it in hearing again without a new order for the same; And whether he should pay costs for so doing, was debated, but not adjudged. *Et nota per* Wilkinson. Except he perfect it the same term, or before the next, so as he get the Lord Chancellors hand to it and pay for the enrolling, he shall take no benefit thereby. But the excessive charge thereof makes parties slow in the same, 1 *Mail*, 1605.

*Widow & Heir of purchaser ordered to pay the money for lands himself should have paid.*

*Inter* Hurle & Butler lands sold, and Bond given for the same money and unbaselled, the same comes to the Widow of the Purchaser for life, and the heir in reversion being under age one year or thereabout, they covenant to pay the money, and being sued in the *Chancery*, the Defendant alledged the woman had it but for life, and that the heir was under age at the making of the Covenant, & *non allocatur*, but ordered by the Lord Chancellor that they two should pay it, and agree amongst themselves for the rate, 3 *Junii* 1603. 3 *Jacobi*.

*Defant sued.*

*Of Mistaking names of Corporations.*

*Inter* Slocomb. & al. *Nota*, by the L. Chancellor *Elsemore* said, that it is no conscience for a Corporation to avoid their Grant by a misnomer. And from the time of the first printed reports till the time of *E.* 6. no such thing in the year-Books. They would take advantage thereof when they were sued sometimes, *sed non Exercitum* And Tenant for years after his years determined yeilding possession to one claiming by

another title dealeth dishonestly, though the
ssor will presently thrust him out, not so of
enant at will. And therefore in this Case the
ssion ordered with the first Lessee against
tle and Tenant.

A Writ is awarded against the Defendant, his Councellors and Attorneys, that they upon pe-alty of 100 l. shall sue no execution of a Judgement in an Action of debt commenced by the Defendant against the Plaintiff at the Common Law, until further order be taken therein by this Court, of *Chancery* *Robert Cotes* Clerk Plaintiff, *John Freston* Defendant. *Anno* 5 & 6 *P. & M.* *An Injunction to stay Execution.*

*John Wynne ap Rice* maketh Oath that both parties be inhabitants within the jurisdiction of the Commissioners in the Marshes of *Wales*, therefore the matter between the said parties is remitted to the determination of the Commissioners. *William ap John ap Richard* Plaintiff. *Lambe*, viz. *Riffith* Defendant. *Anno* 5 & 6. *P. & M.* *Jurisdiction of Wales allowed.*

*Green* Plaintiff *ap Jenn. f.* 2. pleads the jurisdiction of *Wales*, and dismissed. *Anno* 5 & 6. *P. & M.* *Jurisdiction of Wales allowed.*

*Thomas* Plaintiff *ap Meredeth f.* 3. pleads the jurisdiction of *Wales*, and it is allowed him by this Court. *Anno* 5 & 6. *P. & M.* Consimiliter.

*Thomas Heiber*, one of the Defendants made oath as well for the impotency of *James Heiber* one other of the Defendants, as also that all the parties are inhabiting within the jurisdiction of the Commission in the North parts; Therefore the matter is remitted to the determination of the said Commissioners. *James Marcop* Plaintiff, *Jurisdiction of the North allowed.*

tiff, *James Heyber* and *Thomas Heyber* Defendants, *f.* 2. *Anno* 5 & 6. *P.* & *M.*

Consimiliter. *Rogers* Plaintiff, *Merehouse* Defendant, plead the jurisdiction of the North parts, and dismissed thither, *Anno* 5 & 6. *P.* & *M.*

*The Defendant payeth costs for not attending the hearing.* The Defendant did not attend the hearing of the cause at the day appointed by order of the Court, therefore he is ordered to pay to the Plaintiff six shillings eight pence costs, and the Cause is to be heard *mens. Mich.* next, at the Defendants peril. *John Taylor* Plaintiff, *Rowland Walker* Defendant. *Anno* 5 & 6. *P.* & *M.* *f.* 3.

Consimiliter. *Mason* Plaintiff, *Rotheram* Defendant, payes costs for not attending the hearing of the cause. 5 & 6. *P.* & *M. fol.* 4.

Consim. *Lacy* contra *Price*, pays costs for not attending the hearing of the Cause. *Anno* 5 & 6. *P.* & *M f.* 5

Consim. *Bellamy* Plaintiff, *Dean* Defendant, payes costs for not attending the hearing of the Cause. 5 & 6. *P. M. f.* 17.

*The Plaintiff payeth costs for not attending the hearing.* Forasmuch as the Plaintiff did not give his attendance neither by himself nor Counsel to hearing of the Cause at the time appointed by order of the Court, therefore it is ordered the Plaintiff shall pay the Defendant for his costs six shillings eight pence, and the matter to be heard between this and Tuesday next. *John Clark* Plaintiff, *Thomas Avory* Defendant. 5 & 6. *P.* & *M.*

*The cause is dismissed for the Plaintiffs not attending hearing.* *Creed* Plaintiff, *Long* Defendant, the Defendant dismissed for the Plaintiffs not attending the hearing. *Anno* 5 & 6. *P.* & *M.*

A final Decree is made for the Plaintiff, as

y the Record thereof signed with the hand of the Lord Chancellor as doth appear. And the said Record is delivered to *Thomas Powel* for the said Plaintiff to be inrolled. *William Nowel* Plaintiff, *William Greve* Defendant. 5 & 6. P. & M. f. 6. *The manner of entring of a Decree.*

Forasmuch as the Defendant hath commenced an Action of Debt of 200 l. against the Plaintiff in the Kings Bench, whereby the King and Queens Majesty are hindred of their Fine which should have been paid upon the original, which should have been pursued out of this Court; Therefore an Injunction is awarded against the Defendant upon the pain of 400 l. to surseace until further order be taken by this Court. *John Knight* Plaintiff, *Thomas Newnham* Defendant. 5 & 6. P. & M. *Injunction for defrauding the Kings fine.*

*Linsey* Plaintiff, *Barber* Defendant, stayed by Injunction for not paying the Kings Fine. 5 & 6. P & M. f. 8. Consim.

*Greneacres* contra *Hemage* Defendant: The Defendant stayed by Injunction for not paying the Kings Fine, 5 & 6. P. & M. f. 12. *Cum multis aliis.* Consim.

*Domina Dorothea Guidot* Plaintiff, *Francis Kemp* Defendant, whereas an Injunction was awarded for stay of the proceeding at the common Law for not paying the Kings Fine; It is ordered because the Plaintiff hath that day paid her Fine, that she may proceed notwithstanding the Injunction to stay her, *Anno* 1 *Eliz. fol.* 117. *The fine to the King paid, the Injunction is discharged.*

Forasmuch as Serjeant *Catlyne* of Councel with the Plaintiff, hath undertaken that the Plaintiff shall not distrein or otherwise molest the in Court. *A ground to induce the Court to retein a cause in Court.*

the Defendant at Common Law; It is ordered the matter shall be here retained, and the Defendant make a better answer. *Sheldon* Plaintiff, *Barnes* Defendant, 5 & 6. P. & M. fol. 10.

*Witnesses in perpetuam rei memoriam published.*

The Plaintiff hath taken Oath, that certain Depositions of witnesses examined on his behalf in *perpetuam rei memoriam*, remaining in the Court, are to be given in evidence at the Common Law, therefore publication is granted of the same witnesses. *Tindal* Plaintiff, Defendant, 5 & 6. P. & M. f. 10.

*Injunction upon a Petition.*

An Injunction is awarded against the Defendant upon pain 1000 l. to surcease prosecution of any action against the Plaintiff touching the matter in the petition exhibited by the Plaintiff into this Court until further order be taken by this Court. *Knight* Plaintiff, *Bowman* Defendant, *Anno* 5 & 6. P. & M. fol. 11.

*Stay of Execution by assent of Counsel.*

*Richard Forset* being of Counsel with the Defendant, hath undertaken in open Court, that he nor any other in the name of the Defendant shall call for Execution of Judgement in an Action commenced by the Defendant against the Plaintiff at Common Law until this Court be made privy thereunto. *Taylor* et al. plaintiff, Earl of *Lenox* and Dame *Martha* his wife defendants, 5 & 6. P. & M. f. 11.

*The Plaintiffs Father seized in fee. A condition to re-enter for non-payment of rent; deviseth the land to another.*

The Plaintiffs Father did purchase in Fee-farm to him and his Heirs the manner of long *Eason* in the County of *Derby*, of one *Ruswelmarch*, rendring eight pounds rent with a condition of re-entry for non-payment of the rent. The Plaintiffs Father devised the said manor

to

to the defendants wife for her life. And the plaintiff sued the defendant to have him put in bond to pay the said eight pounds rent left the land should be forfeited, and to have the Evidence concerning the said mannor, and ordered the plaintiff should have a *Subpœna* to the defendant with a *ducens tecum* for the Evidence, & to enter bond for payment of the said rent. *Pime* plaintif, *Smith* defendant. *Anno* 19 *Eliz.*

*for life ordered upon ducens tecum for the Evidence and Bond to pay the rent.*

Forasmuch as the Plaintif hath procured processe against the Defendant unto Attachment of Proclamation, and yet hath exhibited no Bill against him the said defendant, he now appearing thereupon; Therefore th plaintif is adjudged to pay to the defendant thirty three shillings four pence costs for his wrongful vexation. *Plowright* plaintif, *Parmeter* defendant. *Anno* 19 *Eliz.*

*Processe of contempt issued out, the Defendant appears, no Bill filed, and costs awarded.*

The plaintif being coppyholder, sued the defendant being the Lord of the manner, to accep a reasonable fine for his admission into certain copyhold-lands, and offered five pounds for a fine, so as the Defendant would never take above two years value of the Tenants of the mannor for a fine upon any admission, which the defendant yeilded unto; And therefore ordered by assent accordingly. *Rellich* plaintif, *Eyre*, *Best*, *Bristow*, and *Goulton* defendants. *Anno* 19 *Eliz.*

*Two years value in fine for admittance to copyhold.*

Forasmuch as Mr. Dr. *Yale*, one of the Masters of this Court, to whom the consideration of a contempt in the breach of an Injunction was committed by Master Serjeant *Powtrel* was referred, hath made report that the said Serjeant *Powtrel* after the open publishing of the same

*The Plaintiff having an Injunction against the Defendant and published, ye Serjeant Powtrel mo-*

*ved for judgement, and is enjoyned not to depart the town without Licence*

same Injunction, and after perfect knowledge thereof did move at the *Kings Bench*-Barre for Judgement for the Defendant iterating his motion for the same, which he did after the sight of the said Injunction. Therefore the said Mr. Serjeant *Pountrel* being this present day called into this Court is openly enjoyned in the sum of one hundred pounds, not to depart out of the Town until he shall be licenced thereunto by the Right Honourable the Lord Keeper of the Great seal of *England*. *Allen* plaintiff, *Dingley* defendant. *Anno* 19. *Eliz.*

The like order was made the same Term against Master *Robert Snagg* for moving for the Defendant in the *Kings Bench* in the same cause.

*A Bond made to the L. Keeper upon a Commission of rebellion.*

The Defendant hath this day made his personal appearance in this Court upon a Commission of rebellion according to this Bond made to the Right Honourable the Lord Keeper in that behalf.

*A Subpœna to testifie before the Mayor, the witness appearing found no Suit there, yet an Attachment gotten, but ordered to be discharged with costs, and after no Subpœna to testifie before the Mayor without the L. Keepers hand.*

The Defendant being commanded by *Subpœna* out of this Court to testifie in a Case depending before the Mayor of *London* between one *Ralph Sidell* and *Timothy Nottingham*, the defendant came accordingly into the Mayors Court and found there no matter depending, and yet nevertheless offered to be deposed, so he might have his charges, which was refused him, and yet nevertheless the plaintiff hath procured an Attachment against the said defendant which this Court utterly misliketh; Therefore the defendant to be dismissed with good costs, if the cause be not shewed to the contrary. And it is further ordered that no *Subpœna ad testificandum* be

be made by any Clerk of this Court before the Major of *London* as aforesaid, without the Lord Keepers hand be first procured thereunto. *Sidal* plaintif, *Butler* defendant. *Anno* 19 & 20 *Eliz.*

*After witnesses examined one of the defendants Commissioners another day appointed, cometh not the plaintiffs Commissioners proceed to examine and certifie all without the other Commission; ordered the Depositions shall be preserved, and a* dûcens tecum *to bring in the Commission.*

A joynt Commission went out to examine witnesses on both parts to 4, 3, or 2, Commissioners: three met and examined divers witnesses and appointed a new day to examin again The defendants commissioners took up the Commission and carried it away, and came not the day appointed The Plaintiffs Commissioners came and examined witnesses without Commission, and certifie these and the former Depositions taken with all the whole matter; And ordered that the Depositions certified be sealed up again, and so remain close in this Court And a *Subpœna ducens tecum* is awarded against the Commissioners to bring in the said Commission. Thereupon further order shall be taken. *Denny* plaintif, *Wilford* and *Hearring* defendants. *Anno* 12 & 20 *Eliz.*

*An Injunction to stay an action at Common Law the suite in this Court having the precedency.*

An Injunction was awarded against the defendant for stay of an Action of the Case upon an Assumpsit by him brought in her Majesties Bench against the plaintiff for or concerning an agreement or contract for a Lease for the which before the plaintif had exhibited his Bill *Crowder* plaintif, *Robinson* defendant. *Anno* 19 & 20 *Eliz.*

*The Sheriff amerced for making a false return.*

The Sheriff upon an Attachment returned *Cepi Corpus, & languidus in prisona.* Whereupon a *ducens tecum* was awarded, and thereon the Shriff returned *adhuc languidus,* Forasmuch as *Walter Williams* made an oath that the

defendant neither at the time of the return, nor now is so sick but that he goeth abroad; Therefore the Sheriff is amerced five pounds for his false return. *Arnold* plaintif, *Roberts* defendant *Anno* 19 & 20 *Eliz.*

*Copyhold surrendred to a man and his wife without words to carry the Inheritance; but because it was intended to be a fee-simple, therefore decreed to the Plaintif and his Heirs.*

*John Beale* Father to the plaintifs Wife surrendred certain copyhold lands, parcel of the Mannor of *Fernham, All Saints*, in the County of *Suff.* to *Richard Peake* and *Anne* his Wife (the said *Anne* being sole daughter and heir to the said *Beale*) without any words to carry an estate of Inheritance but only in the *C. in liberat. est inde sesina Tenend. sibi hered & assign. suis.* And for that it was meant by the said *Beale* to passe a Fee-simple, and many other Coppies as well in the same Mannor as Mannors adjoyned were passed in like words; Therefore decreed, the plaintif and his heirs shall enjoy the lands from the defendant and his heirs. *Peake* plaintif, *Peake* defendant. *Anno* 19 & 20 *Eliz.*

*The defendant being free of the Salters in London, & trading as a linnen Draper, got a Writ of priviledge as servant to a Master of the Chancery to discharge an arrest, but disallowed.*

The plaintif arrested the defendant in *London* in an action of 100 l. for Wares sold, and the defendant using the trade of a linen Draper, and free of the Salters, got a Writ of priviledge out of this Court, supposing himself to be servant of Doctor *Clark*, one of the Masters of this Court, which this Court disliketh that any such person should have priviledge: It is therefore ordered that if the defendant be free of the Salters, and trade as a linnen Draper in *London*, he shall not be allowed his priviledge *Duckett* plaintif, *Barwick* defendant. *Anno* 19 & 20 *Eliz.*

*Jurisdiction of*

The defendant demurred unto the plaintifs Bill,

Bill, for that he was inhabitant in the County of Lancaſter
Palatine of *Lancaſter*: But becauſe the plaintifs
are ſuch as ought to enjoy the priviledge of this
Court, *viz.* *Worſely* ſervant to the Lord Keeper,
and *Anderton* a Clerk of this Court; Therefore
a *Subpœna* is awarded to the defendant to an-
ſwer or ſhew cauſe why he ſhould not ſo do. *Wor-
ſely* and *Anderton* plaintifs, *Tildeſley* defendant.
*Anno* 19 & 20 *Eliz.*

*not the plaintif ought to have priviledge of this Court.*

The plaintif hath a leaſe in reverſion grant-
ed unto him of certain lands in the defendants
occupation by Leaſe almoſt expired within a
year, and the Plaintif hath Wood and Timber
granted to him, and the defendant having no
authority to ſell the ſaid woods, doth cut down
the ſame and make waſte. Therefore a *Subpœna*
awarded againſt him to ſhew cauſe why an In-
junction ſhould not be granted againſt him.
*Petetſon* plaintif, and *Shelley* defendant. *Anno*
19 & 20 *Eliz.*

*The plaintif in reverſion of a Leaſe hath a grant of the woods, he in poſſeſſion waſts the woods; Therefore an Injunction.*

The plaintif exhibited a Bill of Revivour a-
gainſt the defendant to revive a ſuit, which be-
fore that time the plaintifs father had commen-
ced againſt the now defendant, which ſaid Bill
the defendant did in the plaintifs Fathers life-
time anſwer; Therefore now for the defendants
eaſe and avoiding his charges in coming up; It
is ordered, a Commiſſion be awarded for tak-
ing the defendants anſwer, wherein the plaintif
may joyn. *Higgenſon* plaintif, *Marrowe* defen-
dant *Anno* 20 *Eliz.*

*A Bill of Revivor begun by the plaintifs father. A Commiſſion to anſwer in the Countrey.*

*John Rogers* made oath, he left a note of
the defendants appearance at Maſter *Blakes*
houſe in *Eynam* in Hampſhire, where the de-
fendants moſt abiding is: And that he hanged

*One hangs the Subpœna for a place on the defendants door.*

*And by a note in writing he leaves the day of appearance, and carries away the Writ to serve another.*

the Writ upon the dore for a certain space. And after carried the Writ to *Agnes Hides* house and hanged it upon the door, she then being within the said house, who hath not appeared. Therefore several Attachments. *Hide* plaintiff, *Martin* and *Agnes* defendants. *Anno* 20 *Eliz.*

*Defendant demurreth because the suite is for goods, being a matter of Legacy, and for that one Ex cutor cannot sue another ordered to answer.*

The defendant demurred, for that the matter of goods, chattels and specialties, being a matter of Legacy, is determinable by the Ecclesiastical Court. And further demurreth, for that by the order of the Common Laws of this Realm one Executor may not sue another, which causes this Court thinketh not sufficient; therefore a *Subpœna*. *Croker* plaintiff, *Hambden* defendant. *Anno* 20 *Eliz.*

*The suite is to have remedy for altering a Record in the Majors Court of London.*

The plaintiff by his Bill seeketh remedy in this Court for the altering or amending of a Plea or Record of Attachment in the Majors Court of *London*. The defendant refused to answer, alledging, that the same fault being amendable by the Common Laws of this Realm was amended by order of this Court. It is ordered, that if the defendant bring a Certificate from the Judge of the Court in *London*, that the said Plea was amended with the assent of the said Court, Then the defendant shall not be compelled to answer any further in this Court. And afterwards *Pasche* 20. *Eliz.* The defendant brought a Certificate from the Recorder of *London*, that the Record was altered by order of the Court; and therefore the defendant was dismissed. *Wignal* plaintiff, *Bland* defendant. *Anno* 20. *Eliz.*

*After two demurs the plaintiff*

*John Bond* late husband of the plaintiff, exhibited a Bill against the defendant, whereupon

the

the defendant demurred, and yet the ſaid *Iohn Bond* replyed, and the defendant likewiſe demurred upon Replication, and after the demurrers put in, the ſaid *Iohn Bond* examined divers witneſſes in Court, and died. And now his wife hath put in a Bill of revivour to have the benefit of the ſaid witneſſes; It is therefore ordered, that no publication of the ſaid witneſſes ſo unorderly examined, be publiſhed without ſpecial order of Court. *Bond* widow, plaintiff, *Killifit & uxor* defendants, *Anno* 21 *Eliz.*

*Iohn* plaintiff *examines witneſſes, and dies, a Bill of revivor to have the benefit of thoſe witneſſes. But ordered that no publication be had.*

*Ralph Barker* maketh oath that one *Robert Love* the plaintiffs ſervant ſerved the defendant with a *Subpœna* in his Maſters name, but refuſed to deliver them the *Subpœna*, but promiſed them a copy, and appearing found no Bill in Court; Therefore an Attachment is awarded, and coſts to be paid by the Plaintiff to the Defendants. *Hardwech* widow plaintiff, *Barker* and others defendants. *Anno* 21 *Eliz.*

*Attachment for want of a Bill.*

The defendant to a *Scire fac.* upon a Recognisance of 400 l. pleaded the Statute of Uſury in a forreign County, but neither in perſon nor upon oath; ordered that the defendant ſhall before Wedneſday next plead ſuch a plea as he will ſtand to, or elſe the former plea upon his oath in perſon, elſe a *nihil dicit* ſhall be entered. *Morgan Wolfe* plaintiff, *Powel* defendant. *Anno* 21 *Eliz.*

*A Plea upon oath ordered, or a nihil dicit.*

The Suit is to cauſe the Defendant to make ſale of certain Lands which one *Cranech* former husband to the ſaid *Anſtace*, whoſe Executor ſhe is, deviſed by his Will, ſhould be ſold by the defendant within the year after his death toward the payment of his debts, the o-

*Ordered for ſale of Lands.*

verplus to his wife. Three quarters of a year being paſt, and the defendant being offered ſeven hundred pounds for the land by the plaintif, and the debts remain unpaid, and the lands like to fall if there be not ſpeedy ſale: Ordered upon motion the defendant ſhall be in Court upon Wedneſday next; And thereupon the Court will take ſuch ſpeedy order for the ſale as ſhall be thought meet. *Stanby & Anaſtace uxor ejus* plaintifs, *Bracewell & al.* defendants. *Anno* 21 *Eliz.*

*Poſts for want of a Bill.*

The defendant made oath that one *William Cope* ſhewed him a Bill, affirming the ſame to be at the plaintifs Suit, but refuſed to deliver the ſame or any note of his appearance; And yet the defendant appeared upon the ſame, and found no Bill in Court at the plaintifs Suit againſt him; and therefore the plaintif is adjudged to pay the defendants coſts. *Coxe* plaintif, *Hopkins* defendant. *Anno* 21 *Eliz.*

*Anſwer reſpited.*

The ſaid *Mantel* one of the defendants maketh oath that his wife hath a young childe ſucking upon her, without whom he cannot directly anſwer. And that the other defendant is an Infant under the age of 21 years; Therefore they are reſpited for anſwer untill *Trinity* term next. *Dale* plaintiff, *Mantell uxor ejus & Dale* defendants. *Anno* 21 *Eliz.*

*A Suit againſt a man and his wife, the huſband dieth, a Bill of revivor againſt the wife.*

The plaintif exhibited his Bill againſt *Frevill* and *Jane* his wife and one *Bankes*. After *Frevill* died, It is ordered that the plaintif may exhibite a Bill of Revivor againſt the ſaid *Jane* in her own name and ſo to proceed. *Pate* plaintiff *Jane nuper ux. Frevil & Banks* defendant *Anno* 21 *Eliz.*

In

In *Offleys* Case, *Nota*, the Lord Chancellor said, that no remedy is to be given in *Chancery* for extending over low, except there be fraud or practise; And an *Audita querela* lies upon a second deteasance, whether the Statute be forfeit or not as well as upon the first. The principal Case was, *Offley* the Father lending money for usury, and taking a Statute, the same was forfeited, but not extended till the land came to the Purchasers hands; and being extended, the Father devised the extent to a younger son, there being more levied by the extent according to the true value then the penalty of the Statute. The Purchaser was plaintiff against the devisee, and the Lord Chancellour enclined to releive him, 10 *Febr.* 1. *Jacobi.*

*Value of lands extended.*

*Thomas Colwel* was served with process to rejoine on the plaintiffs behalf, and had formerly been of Counsel or Solicitor for the defendant in the matter in variance; Therefore ordered that *Colwell* shall not be examined upon any Interrogatories which shall compel him to discover any matter which came to his knowledge as a Solicitor or as of a Councel in this case; But for any other matter it shall be lawful for the plaintiff to examine him. *Creed* plaintiff, *Trap's* and others defendants. *Anno* 21 *Eliz.*

*A Counceller or Solicitor not to be examined upon any matter which came to his knowledge as Solicitor or Councellour.*

The matter of the plaintiffs Bill being but for an obligation of eight pounds, it is dismissed. *Knight* plaintiff, *Smith* defendant, *Anno* 21 *Eliz.*

*An Obligation of 8 l. sued, dismissed.*

The defendant appeared upon an attachment of priviledge as the plaintiffs Suit, and hath answered the Declaration, whereupon each plaintiff hath demurred, therefore the defendant is re-spited

*The plaintiff demurred on the defendants answer.*

spited to depart until *Craft. Trin.* next, &c. *rewe* one of the Masters of this Court Plaintiff, *Bussand* Defendant, *Anno* 21 *Eliz.*

*One appearing on a Commission of Rebellion is committed.*

The Defendant appeared upon a Commission of Rebellion: It is ordered that he be committed to the Fleet, *Carie* plaintiff, *Corriton* defendant *Anno* 21 *Eliz.*

*A vidimus or inspeximus of two ancient Deeds granted, but with great caution.*

They exhibited their Petition to the Lord Chancellor to have a *Vidimus* or *Inspeximus* of two ancient Deeds granted to their Ancestor under the hand & privy Signet of King *Edward* the fourth, whereupon the Lord Chancellor sent for the Queens Attorney, who could alledge no cause to the contrary, thereupon it was ordered that Doctor *Carewe* and Doctor *Fern* two of the Masters of this Court should go to the Tower and there compare the Kings hand in those Deeds, and the privy Signet to other writings of the same time: And if they agree, then a *Vidimus* or *Inspeximus* shall be granted. *William Paston mil. & al.* supplicantes, *Anno* 21 *Eliz.*

*A Scire facias granted to shew cause why a consultation should not be granted.*

*Merick* Clark Plaintiff being Vicar of *Mansell Lacy in Comitat Heref.* sued the Defendant in the Ecclesiastical Court for Tyth-wood, and the Defendant got a Prohibition out of this Court for stay of his proceedings, upon suggestions that the land were holden of the Queens Majesty in Capit. Therefore a *Scire facias* according to the form and course of the Register, was desired by the Plaintiffs Councel, and granted returnable *Octab. Mich.* to shew cause wherefore a consultation should not be granted. *Merick* Clark Plaintiff, *Wolfe* Defendant. *Anno* 21 *Eliz.*

This

This Suit is to be relieved of a Bond of 200 ...es made for payment of 100 Marks deli...ered as an escrome, to be delivered as his deed, ...he 100 Marks for which the Bond was made, ...s paid. The defendant demurred, because ... Plaintiff may have remedy by Law, if the ...nd were delivered upon such condition; but ...ecause the witnesses that could testifie the deli...y of it, are dead; Therefore the defendant is ...dered to make a full answer. *Fox* Plaintiff, ...*ches* Defend nt. *Anno* 21 *Eliz.*

*Ordered to make a full answer upon a demurrer.*

The Plaintiff had a *levari fac.* upon a Judge...ent of a Recognisance against the Defendant ...the Sheriff of *Leicester*-shire, upon which ...rit the Sheriff returned that he had taken ...oods of the defendants Thereupon the plain...had another Writ to make sale of the goods, ...hich Writ the said Sheriff neither returned, ...r paid the money to the plaintiff: Therefore a *Distringas* was awarded to the new Sheriff to ...train, the old Sheriff to bring in the money ...y him levied. *Helbroke* plaintiff, *Beaumont* de...endant. *Anno* 21 *Eliz.*

*A distringas against the old Sheriff to bring in money levied.*

The Plaintiffs desired to have a Bond made ...them by the Defendant, to save them harm...les against the Defendants three Daughters ...oncerning certain Legacies bequeathed by the ...estator to the defendants said three daughters, ...hich the plaintiffs have paid to the defen...dant. And because the defendant at the day of ...earing appeared not, therefore referred to two ...Maste...s of this Court, to see whether it be pro...ved that the plaintiffs paid the d...fenda...t the Legacies or no, to the use of his Daughters; ...hich if they did, then a Decree shall be made for

*An order to make Bonds to save harmless touching Legacies.*

for the plaintiffs, that they, their executors administrators shall be saved harmlesse against his said three daughters, their executors administrators, for so much as the defendant hath received. *Byard & al.* plaintiffs, defendant. *Anno* 21 *Eliz.*

*Lands recovered by assize, The assize reversed by error, and thereupon damages the land again recovered, & suit to be received for the damages.*

The Plaintiff recovered certain lands in dington by assize against the Defendant *Eliz.* and continued possession until by a of Error the same was reversed in 20 *Eliz.* want of a Warrant of Attorney And thereupon damages to the value of 78 l. 14 sh. for mean profits was awarded to the now defendant plaintif in the said Writ of Error. since that time the now plaintif upon a new try hath again recovered by a new assize against the defendant upon the same title: Therefore the plaintif prayeth releif here to the execution for the said 78 l. 1 sh. dam for that (as he alledged) he had no remedy Law to recover any thing in recompence of said mean profits so recovered upon the reversal of the Writ of Error. The Court for the rareness of the Case doth referre the consideration thereof to Master Justice *Southcote*, and Master Justice *Gawdey*, and they to inform the Court of their opinions *Francis* plaintif, *Burnel* defendant. *Anno* 21 *Eliz.*

*The defendant being not of safe memory to answer without oath, or by his* prochian amie.

The Defendant by order of Court was make a perfect answer upon oath, if he were safe memory; if he were not without oath: The defendant made answer without oath by *prochian amie*, and moved by Master *Egerton* that he was not in sufficient case to make answer upon oath: Therefore ordered that Master

*Walde*

...from one of the Masters of this Court shall ...him to see if he be in sufficient state to ...answer upon oath or no, and to certifie ...Court. *Osley* plaintiff, *Morgan* defendant. ...21 *Eliz.*

...he defendant made oath a Subpœna was ...ed on his door by a man unknown, having ...laintiff indorsed on the backside: But it was ...ned unto him by one *John Atwels* that it ...at the Suit of *Robert Atwels* his Brother, ...no Bill nor order: Therefore costs awarded ...ast the Plaintiff. *Atwel* Plaintiff, *Claxton* ...dant. *Anno* 21 *Eliz.* *Costs for want of a Bill.*

...rasmuch as the said Defendant had Com- ...on to take his wifes answer in the Coun- ...and hath not caused the same to be return- ...therefore an Attachment against the De- ...dants. *Hay* Plaintiff, *Auerie* and his wife De- ...dants. *Anno* 21 *Eliz.* *Attachment for not returning answer upon a Commission.*

...For that it appeared, the Lands in question ...re demised and letten by Coppy of Court- ...ll by the space of sixty years and upwards as ...oppyhold lands of the Mannor of *upton bil-* ...*in Com. Devon.* And that the Plaintiff had ...Coppy thereof granted unto him by the Lord ...the Mannor for his life: Therefore decreed ...the Plaintiff. *Wrayford* Plaintiff, *Carewe &* ...*er* Defendants. *Anno* 21 *Eliz.* *A title of coppyhold land decreed in Chancery.*

...The Defendant appeared upon an Attachment ...anted upon Oath that a Subpœna was served ...pon him for his not appearance, and now ...would excuse himself that he was ridden forth ...two dayes before the Subpœna was served; But ...for that it is confessed by *Affidavit* made, the Defendant is to be examined upon Interrogato- ries, *For not appearance upon a Subpœna, served an Attachment, &c.*

ries, and as it shall fall out upon examinatio order shall be taken therein. *Stoddard* plaint *Holland* defendant. *Anno* 21 *Eliz.*

*Common of pasture Estovers, &c. prayed to be relieved, but dismissed, yet a Commission to set out the ways.*

Upon hearing of the cause touching the co mon of *Estovers*, Common of pasture, Herb and Pannage and other profits apprender manded by the plaintiffs by two several Bill *Abberbury* wood in *Com Salop.* and in oth lands mentioned in the Bill. Forasmuch as same seem more meet to be determined by t Common Law; Therefore ordered for th matters to be dismissed. And forasmuch a seemed the plaintiffs, their servants and tena should have necessary wayes through the s Woods; It is therefore ordered by assent, tha Commission be awarded to set them out. T Gardians of All Souls Colledge in *Oxon.* pla tiffs, *Everal* and others defendants. *Anno* Eliz.

*A witness served with a Subpœna, not coming, an Attachment is granted.*

*William Franckland* made oath that *William Fulwood* confessed unto him that he was serv with a *Subpœna*, to testifie in the Court on t plaintiffs behalf, and hath not so done; Ther fore an Attachment against the said *Fulwood Franckland* plaintiff, *Grunsdich* defendant. *An* 21 *Eliz.*

*A Subpœna hanged on the dore of the house supposed to be the defendants lodging, not appearing an Attachment.*

*William Cooke* made oath, that he did see on *Nicholas Stone* hang a *Subpœna* upon the Stree dore of the house in St. *Clements* parish where the defendant did lie, as one of his servan s said, who hath not appeared; Therefore an Attach ment. *Stone* plaintiff, *Leveson* defendant, *An* 21 *Eliz.*

Forasmuch as *John Barodal* made oath, tha the matter of the Bill doth chiefly concern th

said

said *Isabel* who is above seventy years old, and all the Defendants dwell in *Cumberland*: There fore a Commission is awarded to take all their answers in the countrey. *Jackson* plaintiff, *Isabel Barrodel* widow and others defendants. *Anno* 21 *Eliz.*

*One of the chief of the Defendants being seventy years old, and the rest dwelling in Cumberland, a Commission is granted.*

Whereas by an order of the 20 of *June*, the Plaintiffs further proceeding was stayed in a Writ of Error brought by the Plaintiff against the Defendant to reverse a Judgment given by the Mayor and Jurats of the Town of *Rie* for the Defendant in an Action of Debt of 200 Marks, for that the Court was then informed on the Defendants behalf, that the Writ of Error could not lie into any of the Cinque-ports, whereof the said Town of *Rie* is a member, And a *Supersedeas* was then also awarded for discharge of an Attachment awarded against the said Mayor and Jurats; for that after an *alias* and *pluries* upon the said Writ of Error to them awarded, they returned not the same Writ of Error, as by the same order appeareth. Forasmuch as this Court was this present day informed by Master Serjeant *Fenner*, that albeit, no Writ of Error will lie to reverse any Judgement given by the said Mayor and Jurates of *Rie*, for that they have cognisance of Plea by Letters Patents of King *Edward* the fourth; It is therefore ordered that Friday next be given the said Defendant to shew cause wherefore the said Writ of Error should not be allowed, and the further process continued thereupon. *Mercer* Plaintiff, *Telkin* Defendant. *Anno* 21 *Eliz.*

*A Writ of Error brought to reverse a Judgment given in an Action of Debt upon the Statute of Winchester, because Rie was incorporate by Letters Patents in K. Ed. 4ths time.*

*An Attachment for not performing of an order.*

*Simon Crampe* made Oath of the serving of an

an Order made in this Court between the said parties the first of *June* last, who hath not performed the same; Therefore an Attachment. *Haynes* Plaintiff, *Filmingham & uxor* Defendants. *Anno* 21 *Eliz.*

*The Defendant demurres, pretending to be a feme covert, but the contrary alledged, she is ordered to answer, that if it prove otherwise the proceedings to be void.*

The Defendant demurred upon the Plaintiffs Bill, for that she supposed she was a Feme covert, and her husband living in *Barbary*. But for that it was informed on the Plaintiffs behalf that the Defendants husband was burnt in a Ship in *Barbary* two years since, and she understanding thereof, hath since dealt as a Feme sole; Therefore ordered the Defendant shall answer. And if it shall hereafter appear by good proof to the Court that the husband is in life, then it is ordered, by assent all proceedings shall be void. *Wright & uxor* Plaintiffs, *Margaret Raph* Defendant. *Anno* 21 *Eliz.*

*Processus ad audiend. judicium served on the Defendants door and holden good*

*Affidavit* was made that process was hanged on the Defendants door by the Plaintiffs wife to hear judgement, and was thought by the Court to be a good service: And the Court thereupon, proceeded to hearing, *Cross* Plaintiff, *upon* Defendant. *Anno* 21 *Eliz.*

*An Injunction against one that would take advantage of a lease upon a fraudulent trick.*

The Plaintiffs Bill was, for that by his lease his rent was reserved to be paid at the two most usual Feasts in the year, or within one moneth after. And if it shall happen the said rent to be behind after any of the said dayes, terms or times wherein it ought to be paid, or by the space of fourteen dayes then it shall be lawful for the Lessor, his Heirs or Assignes to re-enter, which rent hath most commonly before been paid at the Feast dayes, or within fourteen days after, until of late the Defendant having purchased

chaſed the reverſion (whereof the plaintiff had no notice) demanded the rent on the laſt inſtant of the fourteen days after the moneth, ſeeking thereby to avoid the plaintiffs leaſe, although the rent was tendered at the fourteen dayes end next after the Feaſt, and was alſo within a very ſhort time after tendered to the Defendant himſelf: Therefore an Injunction is awarded againſt the ſaid defendant. *Gardiner* plaintiff, *Ugnell* defendant. *Anno* 21 *Eliz.*

The Bill was, that his teſtator bought and paid for certain commodities which afterwards came to the defendants hands, and they converted the ſame to their own uſe; The defendants anſwered no other in effect, but that they nor either of them are guilty of the matter laid to their charge: Ordered the defendant ſhall make a better anſwer. *Martin* Plaintiff, *Hampton & Rogers* Defendants. 21 *Eliz.*

*The Bill is for Trover and converſion of goods the defendant anſwers not guilty, and ordered to make a better anſwer.*

The Defendants made oath, that they were ſerved with a *Subpœna* to appear in this Court by the Plaintiff. But upon the *Subpœna* it doth not appear at whoſe ſuit; Therefore the ſaid *Sidall* ſhall pay to the Defendant good coſts. *Sidall* Plaintiff, *Darlaſton* and *Tailor* Defendants. 21 *Eliz.*

*He at whoſe ſuit the Subpœna is, doth not appear, plaintiff ordered to pay coſts.*

*Iohn ap Rice ap Morgan* made oath, as well that all the ſaid parties are inhabiting and dwelling within the juriſdiction of her Majeſties Commiſſioners in the Marches of *Wales*, as alſo that the matter therein conteined is for no title of land, but for an Obligation of 30. l. Therefore diſmiſſed, and the party left to take his remedy before the ſaid Commiſſioners and councel of *Wales*. *Griffith* plaintiff, *Owen*

*Juriſdiction of Wales allowed.*

*Jounes & Gibbe* defendants, *Anno* 21. *Eliz.*

*This suit dismissed out of the Court of Requests, therefore motion is made to be dismissed hence, and ordered to put the same in by answer upon oath.*

The defendant by his Councel made request to be dismissed from the Plaintiffs Bill, for that it contained the same matter heretofore dismissed out of the Court of Requests where the Plaintiff exhibited the like Bill. Ordered by this Court, that the Defendant shall put in the same by the way of answer upon oath, and demand Judgement thereupon, whether this Court would any further plea thereupon, *Cot* plaintif, *Tarbury* defendant. *Anno* 21 *Eliz.*

*Injunction to stay proceedings for non-payment of the Queens fine.*

Forasmuch as this Court was informed, that the defendant hath commenced suit in her Majesties Bench against the plaintif upon an action of debt, supposing himself to be damnified to the value of 100 l. whereby her Highness is hindred of her fine, which should have been paid upon the Original, & ought to have been pursued out of this Court: Therefore an Injunction is awarded against the defendant, *Nobes & uxor* plaintifs, *Sheresbawe* defend. *An.* 21 Eliz.

*Hopton* plaintif, *Chase* defendant.
*Morgan & uxor* plaintifs.
*Woller & uxor* defendants.
*Sheiton* plaintif, *With* defendant.
*Fisher* plaintif, *Bowes* defendant.
} *Anno* 21 *Eliz.*

*Consim.*

A like Injunction granted for not paying the Queens fine, where the action was trespass to the damage of 1000 Marks. And for breach of the said Injunction the defendant was committed to the prison of the Fleet. And now upon motion he is ready to pay the fine, upon payment whereof he is discharged of his imprisonment. *Blagrave* plaintif, *Norton* defendant. *Anno* 21 Eliz.

*Consim.*

The

The defendant got costs for want of a Bill, and after the plaintif shewed forth a commandment from the Councel of the Marches of *Wales* at the defendants suite, procured after the serving of the *Supœna*, to shew cause why he should not stay his proceeding in this Court, whereupon he staid the putting in of his Bill. Therefore discharged of the costs. *Brown* Plaintif, *Benson* Defendant, *Anno* 21 *Eliz.*

*For want of a Bill costs is gotten and discharged for that by the defendants means he was stayed to proceed by authority of the Councel of Wales.*

Forasmuch as the Commissary of the University of *Oxford* hath certified under the seal of the said University, that the said *Gibbard*, one of the defendants, is a Master of Arts and Batchellor of Divinity within the said University: And that by the confirmation of our Sovereign Lady the Queens Majesty, and by the grant and confirmation of her Highness Noble Governours, none of the said University, which the said Commissary shall certifie to be a necessary member of the same, shall be compelled to answer to any suit or action whatsoever out of the same University, except it be for fellony, mayme, or free-hold, as by the same Certificate more at large appeareth. And for that also it seemeth unto this Court, that the matter wherewith the said *Nicholas Gibbard* is charged, is for a supposed going about to get a coppy of a Court Roll out of the hands of the said *Margaret Pawling*, another of the said defendants: It is ordered that the said *Gibbard* be dismissed, and the Plaintifs referred to take their remedy before the Chancellor of *Oxford*, Vice-Chancellor or Commissary of the same University. *Pawling* Plaintif, *Humphry Sacræ Theolog.* Professor, *Gibbard* and *Pawling*

*Jurisdiction of Oxford allowed.*

widow defendants. *Anno* 21 *Eliz.*

*Procedendo to the Major of London, and nothing done, the Lord Chancellor writ his letters to give judgement, or shew cause.*

The plaintiff procured a *Procedendo ad judicium* to the Lord Major of the City of *London*, to proceed to Judgement upon a verdict given in the Sheriffs Court in *London*, and an *alias* and *plures* thereupon. And yet the plaintiff can get no Judgement thereupon, nor the Writs returned; wherefore the Lord Chancellor vouchsafed to write his letters to the Lord Major, either to give judgement or to certifie why he doth not. *Hanton* Plaintiff, *Wentworth* defendant. *Anno* 21 *Eliz.*

*Subpœna returnable the last day of the term, answered three days before the term, Attachment gotten & discharged.*

The defendant was served with a *Subpœna*, returnable the very last day of the Term, then appearing took a copy of the Bill, and put in his answer three days before the next Term, and yet the plaintiff procured an Attachment against the defendant, for that his answer was not put in in time: Ordered to be discharged. *Fox* plaintiff, *Wilcocks* defendant. *Anno* 21, *Eliz.*

*A Subpœna served, but no Writ labell or note left yet upon oath, costs is awarded for want of a Bill.*

The Defendant made oath, that he was served with a *Subpœna* by *Thomas Rock* in the name of the Plaintiff, and at his suite as he affirmed but would neither deliver the Writ or note of appearance, but told him his day to appear, was the first day of the Term, and upon his appearance no Bill is in Court: Therefore costs is granted against the plaintiff *Parsons* plaintiff, *Ilford* Defendant. *Anno* 21, 22. *Eliz.*

*Oath made he saw a Subpœna served.*

*John Musgrave* maketh oath, that he saw a *Subpœna* served on the defendant *ad audiendum judicium*, about a fortnight past. *Baynow* plaintiff, *Gorgane* Defendant. *Anno* 21, 22. *Eliz.*

*Attachment for*

An Attachment is awarded against the Defendant

fendant for proceeding in the Court of the Mannor of *Benſted*, contrary to the order of this Court. *Billing* plaintiff, *Pate* and others Defendants. *Anno* 21 & 22 *Eliz.*

*breach of an order.*

*Franchlin* Plaintiff, *Wathins* Defendant, An Attachment granted against the Defendant for breach of an order of this Court. *Anno* 21 & 22 *Eliz.*

*Conſim.*

*Stodard* plaintiff, *Holland* defendant. } *Anno* 22 *Eliz* } *Conſim.*
*Couper* plaintiff, *Woodward* defendant. }

A *Subpœna* was awarded out of this Court to anſwer a Bill of perjury committed by the defendant *Goze*, in ſwearing for the impotency of the other Defendant, whereas he was not above fifty years old, and able to travell. *Griffith* Plaintiff, *ap Ienkins* & *Goze* Defendant. *Anno* 21, 22 *Eliz.*

*A Bill of perjury.*

The defendant was diſmiſſed for want of a Bill, and fourty ſhillings given him; whereupon he beſpake the *Subpœna* for coſts, and *Robert Bailes* Clerk made the *Subpœna ad comparend.* which being ſerved, the other appeared and got coſts, both which coſts were diſcharged, and ordered that the plaintiff may have a *Subpœna* againſt the ſaid Clerk *Robert Burles* for the coſts. *Fairbanck* Plaintiff. *Domina Metham* defendant. *Anno* 21 & 22 *Eliz.*

*Coſts againſt the Clerk for miſtaking the Subpœna.*

An Attachment was awarded againſt the defendant, upon oath he abuſed the Plaintiff in ſerving a *Subpœna* upon him, the defendant appearing *gratis* to anſwer what could be objected againſt him touching the contempt; whereupon it

*The defendant examined upon Interrogatories touching abuſe of the plaintiff in ſerving Proceſs.*

it was ordered by the Court, that the defendant ſhould be examined upon Interrogatories before his departure *Segrave* plaintif, *Norton* defendant, *Anno*, 21. 22. *Eliz.*

*To be relieved or diſcharged for Legacies paid to the defendant.*

The Bill was, for that the plaintif being Executor to the defendants father, paid the defendants Legacies, for which the plaintif deſired the defendant might give him a releaſe or other diſcharge, depending which ſuite the defendant ſued the plaintif for the ſame Legacies in the Spiritual Court; Therefore an Injunction. *More* plaintif, *More* defendant. *Anno*. 21. 22. *Eliz.*

*A ſuite againſt a Bailif of a Liberty for not returning a Proceſs, and diſmiſſed*

The Bill was, for that the defendant being Bailiff of the Liberty of *Wenlock* denied to allow an eſſoigne unto the plaintif, and to return a Writ of Error and other proceſſe, yet diſmiſſed. *Sharpe* plaintif, *More* defendant. *Anno*. 21. 22. *Eliz.*

*The heir ſued to make a leaſe promiſed by his anceſtors, for which he took fine.*

The Bill ſhews, the plaintif paid to the defendants Brother, whoſe heir he is, a ſumme of money; for a fine of a Leaſe to be made unto him of certain lands. The brother died before the Leaſe made, and the land deſcended to the defendant: And the plaintif exhibited his Bill againſt the defendant, either to have the Leaſe made unto him, or to have his money repaid, which he paid for a fine; which the Court refuſed, but ordered the defendant ſhould directly anſwer and ſtay proceedings at Law untill licence of this Court be had: But afterwards ordered, for that the defendant came to the lands by the remainder, and not by deſcent, and the promiſe made fifteen years before, therefore diſmiſſed. *Keene alias Mogg* plaintif, *Meere* defendant,

fendant. *Anno* 21, 22. *Eliz.*

The defendant had a Commission to take his answer in the Countrey, but answered not perfectly, but said he could not answer without sight of Evidences in *Com. Nottingham*, farre distant from *Dorset*-shire where he was: Thereupon an Attachment and Proclamation issued: And because the defendant before the return of the Attachment put in a perfect answer, and was sworn thereto in the Countrey before Master *Walrond* one of the Masters of this Court; Therefore the said Processe of contempt were discharged, paying the ordinary charges of the same, and 2 sh. 6 d. to the Warden of the Fleet. *Tassel & al.* plaintifs, *Willoughby Miles* defendant. *Anno* 21 & 22 *Eliz.*

*A Commission to take the defendants answer in the Countrey, he denies his answer before the return of Attachment out against him, yet sworn thereto before Master Walrond, he puts in his answer, and is discharged.*

*Marbut* plaintif, *Kempster* defendant. The Bill being but for six pounds in money, and no title of land; Therefore it is dismissed. *Anno* 21 & 22 *Eliz.*

*A Bill for 6l, dismissed.*

The Major of *Totnes* certified into this Court under his common seal, that the defendant made oath before him that he was impotent and not able to travell: Therefore a Commission. *Wotton* Plaintif, *Luscombe* defendant. *Anno* 21 & 22 *Eliz.*

*Affidavit made of the defendants impotency. A Commission is granted.*

Upon the Certificate of the Major of *Exeter*, of an oath taken before him for the serving a *Subpœna*, and no Bill found in Court, therefore an Attachment is awarded, *Preston* plaintif. and *Smith & al.* defendants. *Anno* 21, 22. *Eliz.*

*Costs for want of a Bill.*

The defendant made oath he received a Billet of paper of *John Barker* his brother, who likewise deposeth the same was delivered unto him

*Costs.*

by the plaintiff, and no Bill in Court: Therefore costs is awarded to the defendant. *Cook* Plaintiff, *Barker* Defendant. *Anno* 21, 22. *Eliz.*

*Jurisdiction of Wales allowed.*

*George Elliot* made oath, that all the parties are inhabitant within the Jurisdiction of her Majesties Commission of the Marches of *Wales*, and that the matter of the Bill is for no title of land: Therefore it is dismissed. *Morgan* plaintiff, *Bithel* defendant. *Anno* 21, 22. *Eliz.*

*Fonsim.*

*Philips* and others Plaintiffs, and *Powell* Defendant. Upon oath made that the Defendants are inhabiting within the Jurisdiction of the Marches of *Wales*, and that the Bill was not for title of lands, a dismission is ordered. *Anno* 21 & 22. *Eliz.*

*The Bill is for that money paid upon a Bond, & the Bond is refused to be delivered.*

The matter of the Bill against the said *Orrell* and *Barker* is no other, but that the Plaintiff by the perswasion and under-dealing of the said *Thomas Orrell* and *Edward Barker*, is kept from an Obligation of 100 l. which he made to the said *John Barker* for payment of 50 l. which 50 l. is paid, and the said *John Barker* putteth the said Bond of 100 l. in suite: Therefore dismissed against *Orrell* and *Barker* Defendants, but after it was retained. *Cook* Plaintiff. *Orrell* and *Barker* Defendants. *Anno* 21 & 22. *Eliz.*

*Coppy hold lands which are ancient demeasne lands pleadable here, yet upon view of customary book dismissed.*

The Bill prayeth relief of coppyhold lands, parcels of the Mannor of *Woodstock*, for which he had licence of the Steward of the Mannor to fine in this Court. The defendant did demurre because the lands are ancient demeasne, &c. But ordered to answer, yet after the view of the written customes, dismissed. *Wilkins* Plaintiff, *Gre-*

gory

gory Defendant. 21, 22. *Eliz.*

The matter was for a apportionmen: of ren: of ten shillings *per annum* And the smalness of the matter is dismissed. *Knighton* Plaintiff, and *Thorogood* defendants, *Anno* 21, 22. *Eliz.*

*Suit for apportionment of rent dismissed, the matter is of small value sed.*

The Plaintiff obtained several Prohibitions upon several suggestions exhibited to the late Lord Keeper, which suggestions were sufficiently proved by examination of witnesses in the late Lord Court; Therefore it is ordered that no consultation be granted without the Lord Chancellor be first made acquainted therewith, and the matter heard. But afterwards the Prohibition being granted for that the lands are holden of her Majesty, as of her Duchy of *Cornwall*, a day is given to shew cause why a consultation shall not be granted. *Mayhoe alias Heiraegranted.* & *al.* Plaintiffs, *Battyn* Vicar of *Lostwithall* Defendants. *Anno* 21 22 *Eliz.*

*Prohibition granted upon surmise made to the late Lord Keeper, which surmise was ordered no consultation to be granted, but upon hearing of the matter.*

One *Bens* being produced to be examined as a witness refused to be examined, whereupon an Attachment was granted against him, and he appeared and shewed that the Articles concerning a lease of land whereof the said *Bens* hath the reversion, and therefore discharged of the Attachment. *Livers* wid. & *Oylands* Plaintiffs, *Brend* & *Brandon* Defendants. *Anno* 21. & 22. *Eliz.*

*A witness refused to be examined concerning a lease, the reversion being in himself, and discharged of the Attachment.*

The Plaintiff appeared in Court according to a Recognisance by him and other sureties knowledge upon the suing out of an *Audita Querela* against the defendant, and retained Master *Prowle* to be his Attorney for speedy prosecution thereof according to the ordinary course of the Court in that behalf. *Goodwin* Plaintiff,

*Appearance by Audita Querela.*

Good-

*Goodwin* defendant. *Anno* 21, 22. *Eliz.*

*The defendant disclaiming, examined as a witnesse.*

A Commission went forth to examine witnesses, and the defendant produced four witnesses which were named defendants, but had disclaimed, And yet the Commissioners refused to examin them, and a new Commission was awarded to examine the said persons. *Oke* plaintif, *Pridieux* defendant, *Anno* 21, 22. *Eliz.*

*Priority of suit in Chancery staies a suit in the Spiritual Court.*

The plaintifs exhibited their Bill into this Court to be discharged of payment of Legacies in regard the defendant had sued in the Spiritual Court for the same Legacies; Therefore day is given to the defendant to shew cause why the suit in the Spiritual Court should not be staied. *Parr & uxor* plaintifs, *Tipladie & uxor* defendants. 21, & 22. *Eliz.*

*Defendant of non sane memory.*

*Alexander Wood* maketh oath, that the defendant hath not at this present, nor almost these two years past hath had his perfect senses, by reason whereof he is not able to answer the Bill. *Butler* plaintif, *Jennings* defendant, *Anno* 21, 22. *Eliz.*

*The defendant senseleſſe and dumb, no Attachment, yet after recovery muſt anſwer.*

The defendant being both senseleſſe and dumb, ordered that no Attachment shall go out against him. But after upon information that he is come to his senses, a Commission is awarded to some discreet Commissioners to take his answer. *Altham* plaintif, *Smith* defendant. *Anno* 21, 22. *Eliz.*

*Suit after judgment at Law and outlawry, thereupon diſmiſſed.*

The plaintif after Judgement at the Common Law and Outlawry thereupon, seeketh relief in this Court, but dismissed, and yet after retained, *Owen* plaintif, *James Wid* defendant. *Anno* 21, & 22. *Eliz.*

The

The defendant made oath he was served with a *Subpœna* to appear in this Court, but hath casually lost it. And now upon his appearance no Bill in Court, therefore costs. *Domina Metham* plaintif, *Fairbank* defendant. *Anno* 21, 22, *Eliz.*

*Costs for want of a Bill.*

For that it appears by the Bill, that the matter is for money under ten pounds value, and also the defendant made oath that both parties dwell within the Marches of *Wales*, therefore dismissed to take their remedy there.

*Jurisdiction of Wales allowed, and under 10l. value.*

*Escourt* plaintif.
*Tanner* defendant. } *Anno* 21, 22, *Eliz.*

*John Sperhawke* made oath for delivery of a *Subpœna* to the wife of the defendant at his house, who had not appeared, therefore an Attachment is granted. *Pilgrime* plaintif, *Read* defendant. *Anno* 21, 22. *Eliz.*

A Subpœna delivered to the defendats wife, and at his house a good service.

The plaintif seeketh for relief touching several rent-charges of the said *Ralph*, *Robert* and *Thomas*, whereunto certain lands as well of the plaintifs as of the said *Edwards* the other defendants are chargable; for that the said three defendants charged the lands of the plaintif only therewith. And ordered, because the plaintif is troubled for the rent of the said *Thomas*, by distresse, and he is beyond the seas, and will not answer, that an Injunction be awarded against him. *Dolman* plaintif, *Edward Vavasor*, *Ralph Vavasor*, *Robert Vavasor* and *Thomas Vavasor* defendants. *Anno* 22. *Eliz.*

*Rent charge out of several mens lands, the grantee of the land chargeth one mans lands only. He sueth the other that is chargeable, and the grantee for contribution.*

The defendant had of the plaintif certaine money

*Reversion of a*

*Coppyhold sold which cannot be enjoyed, therefore the defendant is ordered to shew cause why he should not repay the money received.*

money for the reversion of the coppyhold which cannot be enjoyed according to the said agreement: Therefore ordered that a *Subpœna* be awarded against the Defendant, to shew cause wherefore he should not repay to the Plaintiff his money by him received in consideration of the said grant.

*Pickton* Plaintiff, *Lidcote & al* Defendants. } *Anno* 21. *Eliz.*

*The plaintiff shall examine no witnesses before the defendant have answered.*

The Defendants were never served with processe, and yet the Plaintiff served divers witnesses with Processe to examine them. But ordered that no witnesses shall be examined until the defendant be called in by Processe, and have answered according to the ordinary course of the Court. *Epiphanus Sarum*, Plaintiff, *Hinde & Hinde* Defendants. *Anno* 22. *Eliz.*

*Attachment against him that makes a rescue upon Commission of rebellion.*

Divers Commissioners in a Commission of Rebellion have returned upon the same, that one *Ellis* made a rescue upon the execution thereof. Therefore an Attachment is awarded against the said *Ellis*. *Butler & al.* Plaintiffs, *Isaack Wild* defendant, *Anno* 22. *Eliz.*

The suite is for a promise supposed by the Plaintiff to be made to him by the defendant, to yeeld up and surrender a Lease of a pasture and certain tithes upon the payment of 100. Marks by the plaintiff to the defendant, and dismissed upon hearing, as more meet to be decided at the Common Law then in this Court. *Grene* plaintiff, *Bowker* defendant. *Anno* 22. *Eliz.*

*Confirm.*

*Sutton* Plaintiff, *Eyrington* Defendant, a suite upon a promise, and twelve pence accepted in

consideration

nſideration, referred to the Common Law.
no 22. *Eliz.*

The plaintiff after the defendants anſwer put was excommunicate, notwithſtanding the laintif replyed and ſerved the defendant to re- yae, who by way of rejoynder pleaded the ex- ommunication, and ſhewed a Certificate there- f; And yet the plaintiff proceeded and took ut a Commiſſion to examine witneſſes. And rdered that all proceedings by replication and Commiſſion ſince the Excommunication, is oid, and ſhall be ſuppreſſed, and no further roceedings untill the plaintiff bring and ſhew orth in this Court letters of Abſolution.

*The plaintiff is excommunicate after anſwer, and cannot proceed untill abſolution.*

Bobbes ——— plaintiff.
Bobbes & Churchill defend. } *Anno* 22. *Eliz.*

The plaintiff procured an Attachment a- ainſt the defendants, for that they refuſed to e examined before the Town-Clerk of *Lon- on*, being ſerved with a *Subpœna* for that pur- poſe. The matter in queſtion whereupon they ſhould be examined depending not in *London*, but in her Majeſties Bench, which kind of ex- amination the Court holdeth to be diſorderly, and therefore diſcharged the Attachment. *Price* plaintiff. *Fench, Holland* and *Parkhouſe* Defen- dants. *Anno* 22. *Eliz.*

Subpœna to *examine witneſſes before the Town-Clerk of* London *for matters depending at Common Law diſliked by the Court.*

The defendant knoweth no ſuch *Thomas* as is named for the plaintiff, nor the town where he is named to be dwelling, and the ſame defen- dant and his two brethren were likewiſe ſerved at the ſuit of one *Thomas Vaughan*, whereas none

*A party ſerved with Proceſſe in the name of one unknown, for vexation ordered.*

none of them knew any such man, but suppose the Processe was procured against them for vexation by *Matthew ap Richard* and *Charles ap Richard*, who are now in town; Therefore ordered that the Warden of the Fleet shall warne the parties to be in Court to morrow morning to answer the premisses, and then further order shall be taken. *Thomas Vaughan* Plaintiff, *William* Defendant. *Anno* 22. *Eliz.*

*Contempt.*

*Ap Richard* served a *Subpœna* in the Plaintiffs name, where there is no such party; therefore an Attachment against *ap Richard Jones* plaintiff, *Wynne* defendant. *Anno* 22 *Eliz.*

*Jurisdiction of the Exchequer over-ruled.*

The Bill was to be releived upon the extremity of a Bond of 100 l. for not payment of 21 l. at the very instant. The Defendant demurred because he is servant to the Lord *Threasurer*, and ought to be priviledged in the Exchequer; which cause of demurrer this Court alloweth, not for that the defendant can have no such priviledge unlesse the plaintiff might have remedy in the said Court of Exchequer. *Lewyn* Plaintiff, *Fandesey* Defendant. *Anno* 22, *Eliz.*

*Suit for interest of Common and profits apprender dismissed.*

The plaintiffs Bill is for certain wayes, interests of common and profits apprender, and also for taking of Hawkes, cutting of Woods, and taking of distresses. The interest of common and profits of apprender upon hearing thereof were dismissed. The ways referred to indifferent Commissioners. And a day given to shew cause wherefore the matter of distresses, taking of Hawkes, and cutting of Woods should not be dismissed. The Warden of *All Souls* Colledge in *Oxford* plaintiff, *Leighton*, *Mawde* and others defendants. *Anno* 22. *Eliz.*

The

The Defendants demurred for that they are executors, and therefore not chargeable in Law to accompt for goods received by the Testator; But ordered to answer. *Beecher* and others plaintiffs. *Haselwood* defendant. *Anno* 22. *Eliz.*

*Executor charged with goods received by the Testator.*

Because the Bill was for certain frivolous matters grown within the Jurisdiction of her Majesties Commission of the North parts, where both parties dwell, and where also the same matters are depending: Therefore ordered to be dismissed, if good cause be not shewed to the contrary. *Vavaser* plaintiff, *Fowbery* defendant. *Anno* 23, 24 *Eliz.*

*Jurisdiction of North Wales allowed.*

The suit was, for that the Defendant *Need-ham* being Steward and Farmer to her Majesty of the hundred of *Bradford* in the County of *Salop*; he that said *Needham* doth set unreasonable fines and amerciament for not appearance, whereas it was never used to be above six pence, and dismissed as unmeet for this Court, and the plaintiff left to seek his remedy in the Exchequer. *Lewis* Plaintiff, *Needham & al.* defendants. *Anno* 23, & 24. *Eliz.*

*The Bill being to be relieved for amerciaments is dismissed.*

The Bill was, to be relieved upon a bond of 60 l. the defendant demurred, for that all the Defendants dwell within the Jurisdiction of the Marches of *Wales* Albeit the Councel in the Marches cannot award an Injunction for stay of the defend. proceedings in the Common Pleas; Therefore ordered, if the Defendant will agree to stay proceeding at Law, it shall be dismissed, otherwise it is to be retained, and the defendant must answer. *Harris* and others plaintiffs, *Smith* defendant. *Anno* 23, 24. *Eliz.*

*Jurisdiction of Wales disallowed.*

Whereas the said defendant coming up upon Attach-

*Jurisdiction of Chancery is maintained.*

Attachment of priviledge at the suit of the plaintiff, being one of the Clerks of Master Dr. *Carew* one of the Masters of this Court: And being this day according to a former order in that behalf made, brought into this Court by the Warden of the Fleets man (to put in such bail as by the ancient priviledge of the Court is required) alleadged by Master Serjent *Anderson* and Master *Broughton* being of his Councel, that where in her Majesties Bench and other Courts at Common Law, the Bayl or main-pernours by bring in the body of the party condemned, are excused; the now plaintiff doth not only require four special main-pernours of the defendant, where two onely might suffice, but would also have them bound by recognisance, simply to pay summes of money as he shall recover in this suit, without this disjunctive clause, *viz.* or to bring in the body of the Defendant; and therefore desired the plaintif might accept of two main-pernours onely to be bound, either to pay such summes of money as shall be recovered in this suit against the defendant, or else to yield the defendants body to prison. Nevertheless for as much as they were shewed forth divers and sundry ancient Presidents of Bailes taken in like case as aforesaid, as well of old time, as of late time, whereby it generally appeared that four special sureties for main-pernours, and the party also are bound to satisfie to the plaintiff both damages and costs to be adjudged, and to appear from day to day, *donec & quousque*, &c. with which Presidents the Civil Law (as divers of the Masters of the Court affirmed) doth in that point concurre, *viz.* that the Bail and main-

main-pernours are to pay the money received and not to be excuſed thereof by the yielding of the body condemned. It is therefore ordered that according to the ancient cuſtomes and form, (for the infringing whereof no ſufficient matter could be ſhewed by the defendants councel) the ſaid defendant ſhall be forthwith bound himſelf in 400 l. and four ſufficient main-pernours in 100 l. apeece by Recognizance to the plaintiff, to ſatisfie unto him both ſuch damages and coſts alſo as ſhall be adjudged unto him in this ſuit or action; and to have the body of the defendant in Court; and that he ſhall appear from day to day, *donec & quoſque, &c.* as by the ſaid Bail or Recognizance taken in open Court this preſent day it may appear. *John Archbould* plaintiff, *william Burrell* Defendant. *Anno* 13, & 24 Eliz.

*A Fine with a render for years reſerving a rent was charged on more lands then was intended, therefore an Injunction to ſtay execution,*

A Fine was knowledged by the plaintiffs father and one *Leonard Atherton* deceaſed, to *Robert Atherton* and *William Grinſton* with a render back to the ſaid *Leonard Atherton* for twenty one yeares, rendering nine pounds rent, which Fine was levied to make good a leaſe for yeares of five cloſes, containing about eighty acres; but in the ſame Fine were more number of acres conteined: And the defendant having procured letters of Adminiſtration of the ſaid *Leonard Athertons* goods, preceiving the plaintiffs father had more lands neer adjoyning to the ſaid five cloſes, which by the generality of the words of the ſaid Fine, did paſſe in law by the ſaid Fine, being with a rent and render, and ſo not averable to any other uſes, brought a *ſcire facias* upon the ſaid Fine to ex-

ecute the ſame againſt the plaintif; And an Injunction is granted to ſtay the ſaid *Jeire facias Rither* Plaintif, *Tempeſt* Defendant. *Anno* 23, 24. Eliz.

*Lands Aſſured for joynture or marriage never effected, was decreed againſt the woman.*

Certain lands were aſſured to the Defendant *Katherine*, for a joynture upon a marriage intended with one *Paſlow*, which marriage was never effected. But the ſaid *Katherine* after married the other defendant, and never claimed the ſaid lands till of late, that the ſame being come into the hands of divers Purchaſers now plaintifs, and the Feoffement made was intended conditionally, (though by fraud made abſolute) to be void if the marriage take not effect, upon repayment of 100 l. which was repaid. Therefore decreed for the plaintifs, if no cauſe be ſhewed to the contrary by a day. *Birket* and others Plaintifs, *Bereſey* and *Katherine* his wife Defendants. *Anno* 23, 24. Eliz.

*Suit for paſturing or common diſmiſſed.*

The matter of the Bill was for paſturing or common claimed in the Fenne of *Gosberton*, and becauſe the matter is more meet to be decided by the Common Law; Therefore diſmiſſed. *Barty* Plaintif, *Shaw* Defendant. *Anno* 23, 24. Eliz.

*A leaſe for life to one remainder to another, he ſurmiſed it is intended to deſtroy his remainder, ordered to bring the leaſes into the Court.*

The plaintifs Father being husband to the defendant, deviſed by his will certain leaſes to the defendant for her life, the remainder after her death to the plaintif. And upon ſurmiſe the defendant ſeeks to put away the ſaid leaſes, and to ſurrender the ſame, and take new. It is ordered ſhe ſhall bring the leaſes into the Court, to remain in ſafe cuſtody for preſervation both of the plaintifs and defendants intereſts. *Garlick* plaintif, *Garlick* widow defendant. *Anno* 23, 24. *Eliz.*

The

The matter in variance could not be judicially heard in the Court upon the Bill of revivour exhibited by the plaintif for the reviving of a former Bill exhibited by one *Reinolds* deceased, or the plaintif being assignee of the lease in question could not revive the same. *Cheesebroke* Plaintif, *Haselwood & al.* Defendants. *Anno* 23, 24. Eliz.

*Assignee of a lease cannot bring a Bill of revivor.*

The suit was to stay a Writ of dower brought by the defendant against the plaintif, and the cause was, the plaintifs grandfather was bound to leave the now defendant, then his wife, either 40 l. joynture, or a lease of *Nayland* Park, which he then had for many years enduring. The Granfather assured the lease of *Nayland* Park accordingly, by reason whereof the Feoffees of this land had a Decree in this Court against the said wife. Therefore a *Subpena* to the defendants to shew cause why a like Decree shall not now be made for the plaintiff. *Rose* plaintif, *Reinolds* and *Rose* his wife defendants. *Anno* 23, 24. Eliz.

*The husband dead leaveth his wife a lease: yet she sueth for a dowery at Common Law, decreed against her.*

The Bill charged the Defendant with tearing an Obligation or Bill obligatory. The Defendant, for that it was in truth a Bill of Indenture of Covenants, denied the tearing of any Obligation, by his answer. The plaintiff by way of Replication shewed it was an Indenture of Covenants. The Defendant demurred, for that the Plaintiff departed from his Bill, which this Court accounted no departure: Therefore ordered the defendant shall forsake his demurrer, and rejoyne, and joyne in Commission, or lose the benefit thereof, and the plaintif to have a Commission alone, *Pasmore* Plaintif, *Ford* defendant

*The defendant charged for tearing a Bond. In the replication he saith it is an Indenture: the defendant demurres, for that contradiction, but ordered to rejoyne.*

fendant. *Anno* 23. & 24. Eliz.

*Juriſdiction of Wales not allowed.*

Motion was made that the cauſe might be diſmiſſed into the Marches of *Wales*, for that all the parties dwell there, and onely touching a leaſe. But for that the matter is here proceeded into iſſue, and witneſſes examined, and the matter ready for hearing; Therefore it is retained. *Hitcham* plaintiff, *Thynne* defendant. *Anno* 23. & 24. Eliz.

*An Attorney for the plaintiff examined for the defendant.*

One *Colborne* an Attorney at Common Law for the plaintiff, is ordered to be examined, for the defendant, being ſerved with *Subpœna*, refuſing to be examined touching the pulling off, or breaking off a ſeale from an Indenture, not any thing concerning his clyents title. *Havers* Plaintiff, *Randoll* Defendant. *Anno* 23, & 24. Eliz.

*A leaſe paroll ſued for, is diſmiſſed.*

The matter in queſtion being for a leaſe paroll, pretended to be made to the plaintiff for divers years yet to come of divers lands in the Bill mentioned, is diſmiſſed. *Page* Plaintiff, *Spenſer & al.* Defendants, *Anno* 23, 24. Eliz.

*Non-age and forreign birth pleaded.*

The matter is touching a leaſe made by the defendant himſelf which he would avoid by his non-age, and being borne beyond Seas, hard to be proved, and ordered, becauſe the defendant ſeeks to avoid his own deed, that one *Katherine Throgmorton* (who is like to know of the birth of the Defendant) ſhall be examined, though after publication *ad informandam conſcientiam Judicis Purferie* plaintiff, *Throgmorton* defendant. *Anno* 23, 24 Eliz.

*A Purſevant to Lane,*

Upon information that one *Hampton* and two neceſſary witneſſes, do abſent themſelves

selves so as they cannot be found to be served with Process; Therefore a pursevant is granted to bring them in. *Mashall* plaintiff, *Haris & al.* defendants. *Anno* 23, 24 Eliz.

*bring in witnesses that will not be found.*

The Plaintiff recovered dower at the Common Law, and had judgement and execution. But the defendant being rich & wilful, would not let her have any benefit thereby; whereupon she set forth her title by Bill in *Chancery*, and prayed the aid of this Court to have her possession establisht by Injunction: And upon a Letter written by my Lord *Dyer* Chief justice of the Common-Pleas and justice *Meade*, before whom the tryall was had, craving the Lord Chancellors aid for the plaintiff: He granted an Injuction for her possession. *Bracebridge* widow plaintiff *Thomas Bracebridge* Defen. *Anno* 2 , 24. Eliz.

*Injunction granted to settle possession recovered at the Common Law.*

The matter of the Bill is concerning the buying of the title of certain lands in *Cumberland*, being within the Jurisdiction of the Commission of the North, where all the parties dwell, and where the Defendants title was decreed against the Plaintiffs title. And for that the matter of buying of titles is not meet for this Court; And if it were; yet being decreed, this Court thinks not meet to retain the same: Therefore dismissed. *Nelson* plaintiff, *Nelson & Nelson* Defendants. *Anno* 23, 24. Eliz.

*Jurisdiction of the North allowed.*

The matter of the Bill being for interest of Common, was upon hearing after witnesses examined on both parts, and both parts being sufficiently able, referred to triall at Law. *Hussey* plaintiff, *Tankerd* and others defendants. *Anno* 23, 24. Eliz.

*Matter of Common dismissed.*

Upon hearing the matter, being for tenant-

*Jurisdiction of*

*the North allowed.*

right demaned by the Plaintif for which he paid unto *Lathes* one of the defendants 20 l. it is dismissed to the order of her Majesties Commissioners for the North. But *Lathes* ordered to pay back the 20 l. *Walker* plaintiff, *Lathes* and others Defendants, *Anno* 23, 24. Eliz.

*Tenant right dismissed.*

*A cause formerly dismissed, because under value, and is retained, in regard it is proceeded to issue.*

Whereas by order of the Eleventh of *November* last, it was ordered the cause should be dismissed, because the lands in the Bill are under 40 s. *per annum*: But now upon information that the suit is proceeded into Bill, answer, replication, rejoynder, and examination of witnesses, before any exceptions taken; Therefore retained to be heard here: But after a new motion dismissed, *Hulton* Plaintif, *Lacy* and others defendants. *Anno* 24. Eliz.

*Jurisdiction of Chester not allowed.*

The Defendants moved by Master *Warberton* to have the cause dismissed into the County Palatine of *Chester*, where the Defendants dwell, and the matter riseth: But because the plaintif is one of the Yeomen of the Guard, and to be necessary here attending; therefore retained. *Kent & uxor* plaintifs. *Hadock* and *Young* defendants. *Anno* 24 Eliz.

*Consim.*

Upon motion made to have the cause dismissed into the County Palatine of *Chester* where the parties dwell; Because it appears to this Court, that in this suit having formerly continued against the same defendants, they offered to bring into this Court certain Bonds concerning the matter now demanded, and to set down upon their oaths the surplusage of goods remaining in their hands; therefore it is here retained. *Brereton & uxor* plaintifs, *Done & uxor* defendants. *Anno* 24. Eliz.

Upon

Upon Certificate made by the Plaintiffs under their common seale, that the defendant being choſen Sheriff of the County of the ſaid City refuſeth both the oath that belongs thereunto, and alſo the excution of the ſame Office: A ſpecial *Subpœna* was awarded againſt the Defendant, commanding him either to take upon him the ſaid office, or elſe to appear immediately, and ſhew cauſe to the contrary. The defendant being ſerved with the *Subpœna*, appeared before the Maſter of the Rolls, but ſhewed no ſuch cauſe as he liked of. And yet did not only contrary to the commandement of the Maſter of the Rolls given unto him, not to depart the town without licence or giving better ſatisfaction to the Court; but alſo hath hitherto refuſed to take upon him the ſaid office: Therefore an Attachment againſt the Defendant to anſwer his ſaid contempt. The Bailiffs of *Litchfield* Plaintiffs, *Richard Otely* Defendant, *Anno* 24 Eliz.

*A Subpœna againſt one that will not take upon him the office of a Sheriff of a City being choſen thereto.*

The Plaintif being a coppyholder, had the rent due upon the coppyhold extended upon a Statute knowledged by his word, how after ſold the freehold to one *Dowriſh*, againſt whom the defendant after the death of her husband being firſt Lord brought a Writ of dower. And the ſaid *Dowriſh* pleaded, *Ne unques ſeiſie & dower*, whereas he might have pleaded in Barre a Fine levied by the husband, and five years paſt after his death before the Defendants claime, and ſo have barred the Defendant, and ſo the Defendant recovered in the ſaid Writ of Dower, and had the Plaintifs ſaid coppyhold lands aſſigned for her Dower, whereby

*The plaintiff being a coppyholder, and not able to ſatiſfie a recovery in a writ of dower, hath an Injunction.*

the plaintiff is enforced by the Law, becauſe they cannot falſifie the record to be as well ſubject to the diſtreſſes of the tenant in Dower for this rent, as of him that hath the ſame extended. Therefore, and becauſe the Plaintiff cannot plead recovery of Dower to avoid the ſaid extent upon the Statute, for that the ſame Writ of Dower might have been barred by pleading the Fine, whereof the Conuſee of the Statute may take advantage: Therefore if cauſe be not ſhewed, (by ſuch a day) to the contrary, tenant in Dower proceeding by diſtreſs and the avowry, is ſtaied by Injunction. *Quick* Plaintiff, St. *Cleere* widow defendant. *Anno* 24. Eliz.

*Contribution of rent.*

The Mannor of *Monden* in *Suffolk* is chargeable with a rent of thirteen pounds *per annum*, to *Pepes* one of the Defendants, *Harward* in the name of *Pepes*, upon the Plaintiffs lands (ſometimes parcel of the ſaid Mannor) takes a diſtreſs, and avowes for the arrearages of the ſaid rent, and in the name, and by the commandment of *Pepes*, whereas the greateſt part of the Mannor is in the other Defendants hands; *Pepes* by his anſwer denies the diſtreſſes or avowry to be taken or made by his commandment, whereby it ſeems the other defendants do collude to transferr the whole charge of the rent upon the Plaintiffs lands; therefore if no ſufficient cauſe be ſhewed to the contrary (by ſuch a day,) ordered that the proceedings by diſtreſs and avowry be ſtayed by Injunction. *Reeve* plaintiff, *Harward* and others Defendants. *Anno* 24. Eliz.

*An Excommun. capiend. a Sacommunica. capiend.*

The plaintiffs were taken by a Writ of *Excommunicato capiendo*, out of this Court, and in

in prison in the North: And because the same is contrary to the form of proceedings of the Statute of the 5 *Eliz.* Therefore a *Supersedeas* is granted to discharge the said *Excommunicatio capiend.* and for the enlarging of the Plaintiffs. *Smith & uxor ejus* Plaintiffs, *Ferry & Ferry* Defendants. *Anno* 24. Eliz.

*perfection is granted because it is contrary to the form of the Statute.*

The Plaintiff being taken by an *Excommunicatio capiend*, a *Supersedeas* is awarded, because the Writ is made contrary to the Statute out of term, and without return. *Bannister* and others Plaintiffs, *Foanes* defendant. *An.* 24. Eliz.

*Contra.*

The defendants got 40 sh. costs for want of a Bill, and made oath they knew not any such man as the plaintiff is, and that the *Subpœna* was served on them by one *Michael Barrow*; Therefore ordered upon the motion of *Cordell* the defendants Atturney, that a *Subpœna* be awarded against the said *Michael Barrow* either to pay the costs, or to direct the defendants to the knowledge of the pretended Plaintiff. *Barras* plaintiff, *Bast* and others defendants. *Anno* 24. Eliz.

*The plaintiff unknown, costs awarded against him that served the Subpœna.*

The plaintiff arrested the defendant in the Kings Bench, and then served her with a *Subpœna* out of this Court to be examined before the Town-Clerk of *London*, to discover matter against her self in the same cause; & because she was not examined, got an Attachment against her, and got her arrested, whereupon she appeared & was discharged of the contempt by the Court. *Bourn* plaintiff, *Pigot* defendant. *Anno* 24. Eliz.

*Attachment unduly gotten, discharged.*

A *Subpœna ad audiend. Judicium* was delivered to the defendants brother, and the next day a ticket delivered to the defendant himself

*A Subpœna to hear judgement served to the defendants brother.*

of the day of his appearance, and the Court held it good service. *Baines* plaintif, *Wrenn* defendant. *Anno* 24. Eliz.

*Commission of rebellion discharged, because the former Proceſs was not entered in the Regiſter, and the Clerk ordered to pay coſts.*

The defendant was apprehended upon Commiſſion of Rebellion, where neither Attachment nor Proclamation of Rebellion is entered in the Regiſter; therefore diſcharged of the Commiſſion of Rebellion and contempt, and *Thomas Flower* one of the Clerks of this Court that made the Commiſſion of Rebellion to pay to the defendant ſuch coſts for his vexation, as Doct or *Lewis* one of the Maſters of this Court ſhall aſſeſſe. *Hollingworth* Plaintif, *Harding* Defendant, *Anno* 24. Eliz.

*Husband bound that his wife ſhall diſpoſe of* 500 l *at her death.*

The Bill is as well for certain Legacies given them by the late wife of the ſaid *Kitchin*, and alſo to have the ſaid *Huet* ordered not to releaſe a Recogniſance of 2000 marks, wherein the ſaid *Kitchin* is bound unto him in truſt before marriage with his ſaid wife, that ſhe might by her Will diſpoſe of 500 l. goods beſides her Jewels, *Kitchin* demurred upon the Bill, and ſued the ſaid *Huet* in the Court of Requeſts to releaſe the ſaid Recogniſance, and ordered if cauſe be not ſhewed by ſuch a day, then a *Subpœna* to *Kitchin* to make a better anſwer, and to *Huet* not to releaſe the Recogniſance. *Avenant & al* Plaintifs, *Kitchin & Huet* Defendants. *Anno* 24. Eliz.

*Two defendants the one diſclaims* Subpœna *to hear judgment ſerved, but on one the*

The Defendant deſired to be diſcharged of a Decree made againſt him, and one *Shepham* the laſt term, becauſe he was not ſerved with Proceſs the laſt term to hear judgement. But becauſe *Belſon* by his anſwer diſclaimed; Therefore the Decree againſt him without Proceſs ſerv'd

rved is just. *Giles* Plaintiff, *Belson* Defendant, *decree binds both.*
Anno 24 Eliz.

The Bill was concerning certain coppyhold lands, for which the Plaintiff heretofore sued in the Lords Court before M. *Golding* Steward there, where the same upon hearing went against the plaintif. Therefore if good cause be not shewed to the contrary by this day sevennight, then the cause shall be dismissed. *Buning* Plaintiff, *Kipping* Defendant *Anno* 24. Eliz. *The plaintiff loseth his suit for coppyhold in the Lords Court, and is dismissed*

The suit was on the behalf of the Parishioners, as well rich as poor, for and concerning the yearly Almes or distribution supposed to be due by the Parson of the said Parish, of a Rie loaf and a red herring to every Parishioner on Saint *Andrews* eve. But that it appears by a Record in the Exchequer, setting down the value of the said Parsonage, that there is 13 sh. 4 d. yearly to be distributed in victuals at the same time to the poor of that Parish, but not to the Gentlemen and men of ability. And for that the Defendant offereth to give yearly 26 sh. 8 d. in liew of the said 13 sh. 4 d. to the poor of the said Parish who stand in need thereof, Therefore day is given to the plaintiffs to shew cause why they should not accept thereof, or be dismissed. And after assent 40 sh. a year was decreed yearly to the poor. *Elmer* and *Smith* Church-Wardens of *Northwould* in the County of *Norfolk* Plaintiffs, *Scot* Parson of the same Town Defendant. *Anno* 24. Eliz. *Parishioners sue their Parson at every years end to give a rie loaf and a red Herring.*

The suit is to stay a suit at Law in a Writ of Dower made by the Defendant, for that the defendants wife had certain coppyhold lands devised *Coppyhold lands devised in liew of dower, though no barre in law.*

vised unto her in liew of her thirds at Law which she accepted of and enjoyed twenty years, and yet seeketh now to recover dower of the Freehold lands. The defendants demurre because coppyhold lands can be no bar of dower But the Court thinks it no conscience she should have both; Therefore ordered to answer *Lacy & uxor* Plaintiffs, *Anderson & uxor* Defendants. *Anno* 24. Eliz.

*Jurisdiction of Cambridge not allowed.*

The Defendant demurred because he was an University-man of *Cambridge*, and therefore priviledged; yet the plaintiff haveing his necessary witnesses dwelling farr distant from the University, and no compulsary Process lying there to force them to be examined, nor any Commission to be awarded from thence; and also because the plaintiffs witnesses are *singulares testes*, and some of them are kinsfolk, which are not any witnesses by the Civil Law: Therefore ordered that the defendant shall answer. *Praune* plaintif, *Hoditow* defendant. *Anno* 24. Eliz. This cause was after ordered, that after answer and witnesses examined, the matter was dismissed, and the plaintif left to take his remedy before the Chancellour or Commissary of the University of *Cambridge*.

*The plaintiffs witnesses being beyond seas, an Injunction to stay proceedings.*

The plaintif supposeth by his Bill, that the defendant knowing that his most principal witness being beyond the Seas, hath brought an action upon the Case against him, and will give in evidence a note under the plaintifs hand, whereas his witnes can prove it was made upon the defendants promise to take no more then was due; therefore an Injunction. *Swigo* plaintif, *Hanbury* defendant. *Anno* 24. Eliz.

The

The Bill was as well for not tithing as for evidence concerning the same tithes; and for that the matter of tithes hath been in the spiritual Court, and by prohibition brought to the Common Law, where it is most proper to be determined; Therefore the matter of not tithing is dismissed. *Pleadall* plaintif, *Goddard* defendant. *Anno* 24. Eliz. *Suites for tithes dismissed.*

The Plaintif caused certain witnesses to be examined in this Court, whereas there is no suit depending here but at the Common Law; ordered to be suppressed, and never to be given in evidence against the defendant or any claiming by or under him. *Aunger* plaintif, *Betts* Defendant. *Anno* 24 Eliz. *Witnesses examined in this Court, no Bill here depending dismissed and suppressed.*

The Defendants were dismissed by the priviledge of the University of *Oxford*, and the Plaintif left to take his remedy there. *Wise* plaintif, *Frances willis* President of St. *John's* Colledge in *Oxford*, and *Robert Kiblewhite* Fellow of the same house defendants. *Anno* 24. Eliz. *Iurisdiction of Oxford allowed.*

The defendants were dismissed, for that the Defendants dwell in the County Palatine of *Chester*, and the matter of the Bill is for a lease to be had of lands lying in the said County Palatine of *Chester*. *Millington* Plaintif, *Croxton* and others defendants. *Anno* 24. Eliz. *The Iurisdiction of Chester allowed.*

The plaintif put in a Replication of two skinnes of parchment of frivolous matter, and not fit to be rejoyned unto, of purpose to put the Defendant to unnecessary charges, and therefore Master *Godfry* being of counsel with the defendants, desired his client might not be compelled to put in a rejoynder, but that *upon a long and frivolous replication, ordered the defendants may go to Commission without rejoyning thereunto.*

that they may go to Commission with the same, and ordered accordingly. *Harrison* Plaintiff, *Lane & uxor* Defendants. *Anno* 24. Eliz.

*Suit to perform an award without order of this Court decreed.*

The Defendant moved to have the Plaintiffs Bill dismissed, for that he sought to have an award performed, which was not made by Warrant or Commission of this Court; and for that also the plaintiff hath a Bond to perform the same award: but for that the defendant had received the money that was awarded by the same award, and the Bond was under the value, therefore ordered to performe the award. *Kennet* widow Plaintif, *Horner* Defendant. *Anno* 24. Eliz.

*The suit for a lease paroll of a Parsonage.*

The suit was concerning a lease paroll, by the Plaintif claimed to be made unto him of a Parsonage by *Robert Moone*, Father of the Plaintif deceased. The parties proceeded to issue, & the Plaintif desired to have an *Ejectione firme* staied, which is brought by the Defendant *Ward* upon a lease made unto him by the other defendant untill witnes be here examined; and ordered that counsel on both sides shall attend upon Wednesday next, and then farther order shall be taken herein. *Williams* Plaintif, *Moone* Defendant. *Anno* 24. Eliz.

*Demurrer returned upon a Dedimus potestatem ordered to answer.*

The Defendant *Fry* having a *dedimus potestatem* to take his answer, returned a demurrer, which demurrer being excepted to by the Plaintifs counsel, and not sufficiently maintained by the Defendants counsel: Therefore the defendant was ordered to make a better answer. *Perry* Plaintif, *Fry*, &c. Defendants. *Anno* 24. Eliz.

*The Bill amended with an alias.*

The Bill was *Gooding alias Reignolds*, but the

he Subpœna was *ad sectam Nicholai Gooding* and the Subpœ-
nly leaving out *alias Reignolds*. And here-na without,
pon the Defendant got costs for want of a Bill
he supposed, and the Court ordered the costs
nd Attachment for not payment thereof should
e discharged. *Nicholas Gooding alias Rei-*
*olds* Plaintif, *Phillip Yard* Defendant. *Anno*
4. Eliz.

A *Subpœna* was served on the Defendant to *Attachment*
ppear *à die prox. futur in tres septimanas*, gotten upon a
nd tels not when he should appear, and there-Subpœna re-
ore moved by Master *Rotheram* the Defendants *turnable* a die
ttorney (and the rather because the Bill is for prox futur. in
l.) to be discharged of the Attachment, and or-tres septimanas
ered if it be true, the Attachment to be dis-*discharged.*
harged, and the matter dismissed, which after
was by a Master of the Court certified true;
herefore dismissed, and Attachment discharged.

*Foreman & uxor* Plaintifs,
*Gefford & uxor* Defendants } *An.* 24, 25. Eliz.

It was moved by Master Sollicitor generall *The plaintiff*
on the Defendants behalf, that the issue joyned *recovered her*
between the parties in this Court, is only whe-*dower at Com̃*
ther the lands claimed by the Plaintif be parcell *Law, but by the*
of her dower recovered at the Common Law or *potency of the*
no, and therefore meetest to be tryed by the *defendant kept*
Common Law; But Master *Beaumont* being *from execution,*
for the Plaintif, alleaged, that albeit the Plain-*and relieved*
tif hath recovered her dower at Law, yet the de-*here.*
fendant being of great power in the Countrey,
keeps her out contrary to the same recovery:
Therefore an Injunction of this Court is a-
warded,

warded, and the matter by order to be retained *Bracebridge* plaintif, *Bractbridge* Defendant. *Anno* 24, 25. Eliz.

*Jurisdiction of Canterbury over-ruled.*

The defendants refused to answer, for that by the Charter of the City of *Canterbury* they ought not to be impleaded out of the said City, whereupon the answer being referred to the Master of the Rolls, he thought not fit the Defendants should be judges of their own cause; therefore they were appointed to make direct answer. Then they shewed that they held the lands in Fee farme of her Majesty, and therefore prayed her Majesties Councel may be called to it. Ordered, if her Majesties Councel shall not by such a day shew good cause to the contrary, then the plaintif may reply and proceed notwithstanding the defendants prayer. *Hovendon* plaintif, *Major & Communitas Conterbur.* Defendants. *Anno* 24, & 25. Eliz.

*Costs discharged upon Certificate of the Major of Lidford, of a compromise to be had affirmed by oath.*

The defendant got costs for want of a Bill, and upon the Certificate of the Major and Burgesses of *Lidford in Com Devon.* under the common Seal, that one *Thomas Glanvile* Gent. made oath before them that all matters after the serving of the *Subpæna* were compremitted to him and one *John Lugger*, and that they appointed divers meetings, but no end was made: Therefore costs discharged, and Process for the same. *Gooding* plaintif, *Spurwell* and others defendants. *Anno* 24, & 25. Eliz.

*Grandfather and Father being, denizons, Father & grand-*

The cause was, the grandfather and father being strangers were made Denizons, the father had issue a son within the Realme, and then the grandfather purchased lands, and the Father died, and the Grandfather died, and whether

er the ſon ſhould enjoy the lands, was the que-
on. It was ordered that a Caſe ſhould be
ade, and the ſame ſhould be referred to ſome
the Judges. *Tarlink* Plaintiff, *Dominus* *Defendant.* *Anno* 24, & 25. *Eliz.*

*Alice Shipkine* was ſerved with a *Subpœna* *teſtificand* but no charges tendered unto her, by *Affidavit* appears, and yet an Attachment was taken againſt her for not appearing. There-
re ordered a *Superſedeas* ſhould be granted to
charge the Attachment. *William Gardiner* Plaintiff, *John Shipkine* Defendant, *Anno* 25. *Eliz.*

The Plaintiffs husband and ſhe purchaſed
nds joyntly, and to the heires of the husband,
nd both of them levied a Fine to the defen-
nt. But before the Queens ſilver was paid, the
husband died, and the Plaintiff made ſuit to the
ord Chief Juſtice of the Common Pleas to
y the proceedings of the fine, who did ſo for
time, but after it paſſed; wherefore the Plain-
iff to have releif, exhibited her Bill in this
Court, ſhewing that her husband had a great
dvancement by her marriage, and left her in-
ebted, and nothing to maintain her ſelf. The
Defendant demurred, becauſe the Plaintif may
have remedy by Writ of Error to reverſe the
fine. But becauſe the Plaintiff is poor, and not
able to ſue without the quiet poſſeſſion; There-
fore ordered, if cauſe be not ſhewed to the con-
trary (on ſuch a day.) a *Subpœna* is granted a-
gainſt the defendant to anſwer; and an Injun-
ction to continue her in poſſeſſion. *Anna Helſ-
hide* Plaintif, *Edward Wilkinſon* Defendant. *An-
no* 25. *Eliz.*

*father dieth, The queſtion is whether the ſon ſhall have the lands?*

*Husband and wife joyn purchaſers, the remainder to the heirs of the husband, he dies before the Queens ſilver was paid, and the wife ſues to be releived againſt the fine.*

*Two cases with the Judges.*

The questions touching Coppyholders are two; the one, whether the Court, whereat the presentment of a forfeiture in felling of trees upon the premisses by the late husband of the Defendant was made, and whereat the Copy whereby the plaintif claimes, was granted, being holden, and kept? The second, whether the felling of trees by the Defendants late husband upon the premisses without any direct customs, be a forfeiture or no? Ordered that two Cases shall be made, and the opinion of the Judges shall be had thereon. *Cliston Miles* Plaintif, *Basset* widow Defendant. *Anno* 25. Eliz.

*Iurisdiction of Lancaster allowed.*

The Plaintif hath brought up 24. of the Defendants by *Subpœna*, to answer a Bill, surmising that certain writings and Evidences concerning the said Mannor of *Horneby*, and other the Plaintifs lands in the County Palatine of *Lancaster* are come into their hands, whereas they never had any such; and therefore, and because matters arising in the said County Palatine are pleadable within the said County, or within the Court of her Majesties Duchy of *Lancaster*: It is ordered that the Defendants shall shew the same by way of demurrer upon their oaths, and demanded judgement whether this Court will hold plea thereof or not, and thereupon the Defendants may depart for this time. And if the Plaintif shall not by Wednesday shew good cause, the matter shall be dismisst, *Dominus Morley & uxor* Plaintifs, *John Mattro* and others the tenants customary of the Mannor of *Horneby in Com Lanc.* Defendants. *Anno* 25. Eliz.

*Penrudock* Plaintif, *Colet* and others Defendants. The like to this in all points as is last before touching the County Palatine of *Lancaster*. *Anno* 25. Eliz. *Consim.*

The Plaintif removed the matter by special *certiorare*. And Master *Vernon* moved for the Plaintif, that some Records and depositions in the Star-chamber and the City of *London* where the matter hath been examined may serve here for proofs of the Plaintifs surmise; and the rather because some of the witnesses there examined are dead, and some others are beyond the Seas: Therefore it is ordered it shall be so as is desired. *Puckly* and others Plaintifs, *Bridges* and others Defendants. *Anno* 25. Eliz. *Depositions in the Star-chamber and in London allowed in this Court.*

One *Robson* Sollicitor for the Plaintif in this Cause was served with a *Subpœna* to testifie for the Defendant, and refused the same; ordered that he should not be examined, *Strelly Mites* Plaintif, *Albany* Defendant. *Anno* 25. Eliz. *A Sollicitor not to be examined.*

Upon the hearing of the matter it appeareth, that the lands in question have been in the defendants and their possession, by whom they claime by the space of eighty years; Therefore ordered and decreed the defendants to be dismissed. *Blackwell* Plaintif, *Simpson* and others Defendants. *Anno* 25. Eliz.

The Defendant in his answer confesseth the haveing the Lease or Deed, whereby the Plaintif pretendeth to have a joynt-estate with him; therefore ordered a *Subpœna ducens tecum* be awarded against the Defendant to bring the same into the Court, to be seen and perused as this Court shall think fit. *Gifford* Plaintif, *Tripp* Defendant. *Anno* 25. Eliz. *Joynt tenants for years, the one sueth the other for the deed, and ordered to be brought into the Court.*

*Commissioners appointed to examine witnesses, undertake to arbitrate the cause by the consent of the parties, and such end decreed.*

The Commissioners appointed to examine witnesses, certified under their hands, that both parties Submitted themselves to their end, and they both by their consents ordered, &c. A *Subpœna* is awarded against the defendant to shew why that order or award should not be decreed.

*Suit at Common Law against a priviledged person discharged.*

*Lovet* Plaint. *Chamberlen* defend *Anno* 25. *Eliz.*

The Plaintiff declared against the Defendant being a priviledged person in an *Ejectione firme*, and day was given to the Defendant to answer peremptorily.

*Eliz Cutts*, wid. Plaintif. } *Anno* 25. *Eliz.*
*Basilius Johnson*. Defend. }

*Demurrer in case the plaintif is excommunicated, ordered to answer shewing an absolution.*

The Defendant demurred because the Plaintiff was excommunicated. The Plaintiff after obtained letters of absolution, and shewed the same in Court; therefore ordered the same to be allowed, and that the defendant putting in a perfect answer, and paying the charges of Process of contempt which issued out against him be discharged thereof. *Amers* Plaintiff, *Legg* Defendant. *Anno* 25. *Eliz.*

*Forreign plea without oath is not allowed.*

The Defendant put in a forreigne Plea to a *scire facias* upon a Recognisance of 400 l. and not answering the same; ordered if the Defendant be not either sworn to the same Plea, or else put in a good Plea by Friday next, a *nihil dicit* shall be entered. *Conyers*, Plaintiff, *Savill & Savill* Defendants, *Anno* 25. *Eliz.*

*Consim.*

*Slany* Plaintiff, *Cook* Defendant, is the like Cale to the last before. *Anno* 25. & 26. *Eliz.*

The

The Defendant having in his favour a *Ded. Potestatem* to take his answer in the Countrey by reason of his great age, yet he returned a demurrer which he ought not to have done, but should have put in a direct answer, whereupon the Plaintiff had a *Subpœna* against the Defendant to make a perfect answer: And upon oath of the Defendants great age he had a new *Ded. Potestatem* to take his answer, which the Plaintiff feared he would use for a delay, and put in another insufficient answer, and keep the possession of the Prebend in question; wherefore it is ordered by this Court, that if the Defendant do not return a perfect answer, a Sequestration shall be granted. *Kerle & uxor* Plaintiffs, *Lloid* Defendant. *Anno* 25. *Eliz.*

*The defendant may not demur having a Ded. potestatem. If upon a 2. dedimus he shall return a dilatory answer, then sequestration is granted.*

A copyhold tenement was taken joyntly by *William Malborne, John Jeffrey* and *Richard Bucers*, and agreed amongst them, that if any of them died, yet such as he assigned his part unto the same should be enjoyed. And for performance each entered bond unto the other; according to which agreement *William Malborne* assigned his part to the Plaintiff and died: And ordered for the Plaintiff and his heirs against the Defendants and their heirs. *Watts* Plaintiff, *Malborrow & Evans* Defendants. *Anno* 25. *Eliz.*

*Three takers of a copyhold agree, assignment made by any of them shall be good, and ordered accordingly.*

The custome for the Coppyholders of that Mannor was, whether these words, *sibi & suis*, would make an estate of inheritance, and was by order of this Court referred to a triall at the Common Law, and found for the Plaintiff, and the coppyholder to make an Estate of inheritance, and decreed accordingly. *Hide* and o-

*These words sibi & suis, by custome make an estate of inheretance.*

other customary tenants of *Abotsley* in the County of *Worcester* Plaintifs, *William Welsh* Defendant. *Anno* 25. Eliz.

*Coppyhold severed from the Manner.*

The Plaintifs Bill was for that the defendant hath severed the coppyholds from the Mannor whereof they are holden, would thereby defeate their estates. The defendant demurred, but ordered to answer and stay suit at Law. *Harrington* and others Plaintifs, *Glascock* Defendant *Anno* 25. Eliz.

*A reversion thought to be paid at a day, and before the day, received part of the money, and before the day the tenant for life dieth, and then the defendant refused to make assurance, but ordered to do it.*

The Plaintif bargained with the Defendant, to buy of him a reversion of lands wherein one *Theodore Chapues* had an estate for her life for 500 l. to be paid before Hollantide next; which bargain or agreement was set down under the hand-writing of the Plaintif, and before the day the Plaintif paied the Defendant 241. parcel of the money. And after and before the day also the tenant for life died and then the defendant refused to perform the bargain; and ordered the Defendants answer should be referred to Doctor *Hussey*, and if he finde the bargain confessed by the Defendants answer, then the Court will order the lands shall be assured. And after upon Doctor *Hussey's* Certificate of the Defendants answer to be so, It was ordered the Plaintif should pay the money, and the Defendant assure the lands according to the bargain *Butler* Plaintif, *Denton* Defendant, *Anno* 25. Eliz.

*The father seeth to have bonds, &c. Statutes desharged, whereunto his sons were*

The Plaintifs Bill was, for that the defendant by subtile practises drew the Plaintifs sonne into divers Statutes and Bonds of 3000 l. at the least, for Silkes and other stuffes of small value: But thought meet by the Court, that the sonne them-

themselves being both of full age when they entered into the Statutes, and now, shall be parties to the suit. *Savill* Plaintiff, *Wolfall* and others Defendants. *Anno* 25. Eliz.

The Plaintiff examined divers witnesses to prove a contempt, but it seemed unto this Court the Plaintiff had not made any full proof of the said contempt, neither if he had, that yet the Plaintiff bringing the matter of contempt onely to be heard upon an *Affidavit*, could not have any order without a Bill exhibited first in that behalf for the interest of the goods and leases in question. *Anthony Hartford* Plaintiff, *Martha Hartford* widow Defendant. *Anno* 25 Eliz.

The Plaintiff seeks to be relieved against a mortgage of lands made by their Ancestors for a small summe of money. But for that it seemed to this Court, the Defendants and those by whom they claime have been in possession by the space of 40 years, therefore dismissed. *Sedgwick & uxor* Plaintiffs, *Ap Evan* and others defendants. *Anno* 25. Eliz.

*John Nicholson* made oath he hanged the Labell of a *Subpœna* at the Plaintiffs suit on the dore of the house of Master *George* in White Friers, wherein as two of the said Master *George* his servants affirmed, the said Defendant was, who had not appeared; therefore an Attachment is granted. *Woodward* Plaintiff, *Jones* defendant. *Anno* 25. Eliz.

The Defendant shewed a Certificate under the Seale of the University of *Oxford*, whereby it appeareth that he is a cook of *Corpus Christi* Colledge, and ought not by the priviledge of the said University to answer any cause out of

*A contempt without a Bill cannot be heard upon an Affidavit.*

*The plaintiff sought to be relieved against a mortgage made above 40 years before but dismissed.*

*A Labell hanged on the strangers door, where the defendant is and an Attachment for not answering.*

*Jurisdiction of Oxford.*

the same Universitie for any matter of cause, except it be for felony, Mayhem or Franck-tenement; therefore ordered that the Defendant shewing the priviledge by way of demurrer upon his oath be dismissed. But afterwards upon information that the Bill was for Franck-tenement, the matter is retained; but after, because it was under 40 sh. *per annum*, it was dismissed. *John Yate* Plaintiff, *Daniel Alleter, alias Christian* Defendant. *Anno* 25. *Eliz.*

*Costs granted to the plaintif who died, and ordered the Executors should receive the costs.*

Motion was made by the Plaintiffs Executors to have costs, which were granted to their Testator being the Plaintiff, and now dead. And ordered accordingly. *Hawley* Plaintiff, *Radiley* and *Rasse* Defendants. *Anno* 25. *Eliz.*

*Iurisdiction of Oxford allowed*

The Defendant had the priviledge of *Oxford* under the Seale of the Universitie, that he is a Fellow of *New* Colledge in *Oxford*. *Lideard* Plaintiff, *Rayly* Batchellor of Arts Defendant. *Anno* 25. *Eliz.*

*The defendant brought an action of trespass against the plain for coming to his house to serve Subpœna and staied by Injunction.*

The Plaintiff went to the Defendants house to serve him with a *Subpœna* out of this Court, for which coming over his ground and entering into his house, the Defendant brought an action of trespass against the Plaintiff, *Quare domum & clim fregit*. And upon motion of Serjeant *Walmesly* the action of trespass was staied by Injunction. *Brake* Plaintiff, *Stapleton* Defendant. *Anno* 25. *Eliz.*

*The defendant apprehended gratis upon Attachment for beating the plaintiff*

An Attachment went forth against the defendant upon *Affidavit* made by the said Plaintiff, that the Defendant strook him and brake his head when he served the *Subpœna* upon him. The Defendant hearing of the Attachment, appeared *gratis*, and utterly denyed that he strook the

the plaintif, or that he was served with any Sub-
pœna, but only with a billet in paper, and
desired the Plaintif might exhibit his Interroga-
tories whereupon he might be examined; and
ordered he should do so before wednesday, or
else the Defendant is discharged. *Osborne* plain-
tiff. *Tuthill* Defendant. *Anno* 25. *Eliz.*

*when he served a Subpœna, the defendant denied the beating, and ordered the defendant shall be examined.*

The Plaintif by his Bill endeavoureth to pre-
vent the Defendant to avoid a lease assigned by
*Joanes* one of the Plaintiffs, to one *Dawkes*,
which the Plaintiffs are bound by Covenant
and Bond to the said *Dawkes* for enjoying, but
because the Defendant is no wayes privy to the
Bond nor Covenant, it is ordered to be dismis-
sed, if the plaintiff do not shew some other cause
sufficient to divert the Court. *Woodward* and
*Joanes* Plaintiffs. *Lingley* Defendant. *Anno* 25.
*Eliz.*

*The defendant goes about to avoid a lease which the plaintiff assigned to one, and is bound to warrant it, and therefore sues the defendant, but is dismissed.*

The Bill was for arrearages of six pounds
rent for two years reserved upon a Lease for
years, of certain lands, the reversion whereof the
Plaintiff purchased by Fine, but had never sei-
zen of the rent, and therefore no remedy by
Law. And ordered the Defendant should pay
the arrearages, and continue the payment of the
rent after, if he shewed not good cause to the
contrary. But the Plaintiff was allowed no re-
compence for waste before the defendant attorn;
and untill Attornment he is ordered to do no
waste. *Samms* Plaintiff, *Strudbaugh* Defendant,
*Anno* 25. *Eliz.*

The Plaintiff sueth to have a rent of three
pounds, seventeen shillings two pence reserved
upon a lease for years of certain lands whereof
the Plaintiff hath 47 acres; and the Defendant

*A suit for a proportionment of a rent.*

or

or some othere by his assignment 67 acres apportioned. The Defendant now having gotten the reversion of the whole, and also to be relieved of a Condition of not payment of the said rent, and upon the defendants affirmation that the interest of the lease of the 67 years was in one *Tracey*; therefore ordered the plaintif should exhibit a new Bill against the said *Tracey* and the Defendant, And untill that matter should be heard, the plaintif should pay only the moity of the rent to the defendant, which if he did, he is to be discharged of the Condition. *Johnson* Plaintif, *Glenham* Defendant. *Anno* 25. Eliz.

*A Fine taken for a coppyhold, the Lord would avoid it, because granted at a Leete out of the Manner; ordered for the plaintif.*

The Plaintif took up Coppyhold lands of the Defendant, and paid Fine unto him for the same, which the defendant would avoid, because the same was granted at the Leet holden out of the Mannor, whereof the Coppyholds are parcels; but ordered the Coppyholders should enjoy the lands. *Markes & Markes* Plaintifs, *Sadliard* Defendant. *Anno* 25. Eliz.

*Land passed to the wife for life, after to his three sons equally, the one to be heire to the others.*

The matter was reduced to a Case in Law, viz. *Thomas Fordam* to his use in Fee before the Statute of 27 *H.* 8. of certain houses deviseth his houses to his wife for life, and after her decease to remain to *John*, *Thomas* and *Robert* his sonnes, to be divided equally, and each one to be others heire if any deceaseth and dieth before 27 *H.* 8. The wife entereth and dieth, and after *Thomas* and *Robert* dye. Resolved by Justice *Meade* and *Periam*, that *John* should have the whole. *John Fordham* Plaintif, *William Fordham* Defendant. *Anno* 25. Eliz.

*Commission of Rebellion a-*

The wife was apprehended by a Commission of Rebellion, for that her husband and she have

be answered the Plaintifs Bill, and being taken, was carried bound to prison, there in very strict sort; although her husband is not brought in to answer, without whom she cannot compelled to answer: Therefore it is ordered that the wife be discharged untill she and her husband may be brought together to answer. And in respect the wife was unorderly dealt with, the Plaintif shall pay unto her costs as the Court shall award. *Rhoe* widow Plaintif, *Bourne & uxor* Defendants. *Anno* 25. & 26. Eliz.

*against husband and wife, the wife alone is taken and carried to prison, but discharged with costs till her husband be taken first.*

Upon a Warrant from the Sheriff of *Derby*, three of the persons being poor persons, were brought up before the Barons of the Exchequer for the Peace, which seemeth to be very unorderly dealt and procured; but to trouble the Plaintifs; It is therefore ordered that the Custos for that County shall make a Supersedeas for the Peace. *Booth* and others Plaintifs, *John* Defendants. *Anno* 25. 26. Eliz.

*A warrant of the peace to bring the parties before the Barons of the Exchequer, discharged, by Supersedeas.*

The Defendant was taken upon a Commission, and brought in and committed to the Fleet, because he had sate out all the proceedings and ordinary processes of contempt. *Thomas Webb* Plaintif, *Edmond Webb* Defendant. *Anno* 25, 26. Eliz.

*The defendant upon commission of rebellion is committed to the Fleet.*

The Plaintif had a lease of lands which ended at *Michaelmas*, and by his Bill doth surmise he had another lease by paroll made by the Defendant in reversion: whereof he hath no witnesses. The Defendant denied it in his answer; therefore ordered to be dismissed.

*A lease paroll claimed and denied by the defendant, in reversion, for want of proof dismissed.*

chols Plaintiff, *Lonell* Defendant. *Anno* 25. & 26. *Eliz.*

*An Inholder sued for money taken out of Carriers pak in his house, hath an Injunction.*

The defendant sent money into the Country by a Carrier, who trusted the same in a pack and came with one *Wood* another Carrier into the Plaintiffs house being an Inholder, *Wood* the other Carrier did rise in the night and took out the Money, and the next morning both the Carriers departed together, and after *Wood* was apprehended and sent to New-gate, and there died. And the Defendant sueth the Plaintiff being an Inholder, at the Common Law, for that Inholders by the Customs of *England* ought safely to keep their Guests goods, yet an Injunction is granted to stay the suit at the Common Law. *Clark* Plaintiff, *Colibere* Defendant. *Anno* 25, 26. *Eliz.*

*Costs granted to a witness to testifie after publication.*

The Plaintiff is adjudged to pay the Defendant thirty shillings costs, a witness being called into the Court on the behalf of the plaintiff, to testifie after publication is granted. *King* Plaintiff, *Stamper* Defendant. *Anno* 25, & 26. *Eliz.*

*Costs against a Clerk that mistook a Subpœna.*

A *Subpœna ad rejungendum* was bespoken of one *Lomley* a Clerk in the *Subpœna* office, who made the same *ad respond* whereupon the Defendant got 26 sh. 8 d. costs, which the Plaintiff paid, and ordered *Lomley* to pay it him again. *French* Plaintiff, *Couch* Defendant.

*Oath taken before a Major, & by him certified for serving a Subpœna, reviled.*

Forasmuch as the Court was this day informed on the defendants behalf that the plaintiff hath upon a Majors Certificate of the serving of a *Subpœna*, procured out an Attachment against the Defendant without oath taken in this Court for serving of Process as it ought

to

be; therefore ordered the Defendant be dis-
charged of Attachment, and bound for his ap-
earance. *Lee* Plaintiff, *Stanbury* Defendant. *An.*
*16. Eliz.*

*Prannell* Defendant made oath he was served with a Subpœna to testifie for the Plaintiff contrary to an order of this Court; therefore an Attachment is awarded against the Plaintiff, Plaintiff, *Prannell* and others Defendants. *Anno 16. Eliz.*

*The defendant served with a Subpœna to testifie for the Late plaintiff, which is contrary to the order of this Court.*

The Bill was against the Defendants as executors to have them assent to the Plaintif to enter into a lease devised unto him by the Testator. The Defendants took a Commission to take their answers in the Country, and ordered the defendants shall not alien, commit, waste; nor leave the rent unpaid during the suit. *Carter* Plaintif, *Cupper* and others Defendants. *Anno 16. Eliz.*

*A Legatee sueth the Executor to consent to the legacy.*

*Thomas Blood* made oath the defendants son upon the son confessed his Father was served with a *Subpœna*, who hath not appeared; therefore an Attachment is granted. *Blake* Plain. *Birde* Def. *An. 16. Eliz.*

*confession the father was served with a Subpœna, Attachment granted.*

The matter of a Bill was to stay the suit of a Recognisance of 2000 l. knowledged to the Lord Keeper *Bacon*, The Defendant confessed the said Recognisance was acknowledged but in trust to the Lord Keeper *Bacon* for the preservation of the inheritance of the land in the blood of one *William Waller* who acknowledged the Recognisance, whereof a recovery is had to perfect a lease lately made, the first lease being made by the Lord *Bacon*'s privity, and the inheritance setled as before by a limitation of use, and the defendant *Waller* is in reversion, and

*A Recognisance knowledged to preserve the inheritance of land in the blood, ordered to stay proceeding at the Common Law.*

not

not prejudiced. It is therefore ordered to stay proceedings upon the Recognisance, and the said Sir *Nicholas Bacon* and *Nathanial Bacon*, although named as Defendants to treat of the matter. *William Waller* and *Thomas Waller* Plaintiffs, *Nicholas Bacon miles*, *Nathaniel Bacon ar.* executors of *Nicholas Bacon militis nuper custodis magni Sigilli*, & *John Waller* Defendants. *Anno* 26. Eliz.

*A protection from the Queen wherein is desired an Injunction to be granted to stay such suits as will concurre with the rest of the creditors. which is granted accordingly.*

The Queen granted a Protection to *Woodcock*, *Napton* and *Sewell* to the end they might be better able to pay their debts to all their creditors. By which Protection her Majesty further willeth that an Injunction be granted out of this Court against all such as should implead the said *Woodcock*, *Napton* and *Sewell*, and not content themselves with the aforesaid rate. And because the defendants do commence suit at the Common Law, and do not content themselves with the aforesaid agreement, therefore an Injunction is granted if cause be not shewed to the contrary. *Ramsey miles* and others creditors of *Woodcock*, *Napton* and *Sewell* Plaintiffs, *Brabson* and others Defendants. *Anno* 26. Eliz.

*upon an insufficient answer a Subpœna to make a better, and to pay the charge of the copy of the first answer.*

The Bill was for certian Coppyhold and Free-hold land leased by paroll, the Defendant made an unsufficient answer, which by order is referred to Doctor *Carewe*, and if he certifie the answer insufficient, then a *Subpœna* is awarded to make better answer, and to pay the charges of the Copy of the first answer. *Collins* Plaintiff, *Meade* and *Whidden* Defendants. *Anno* 26 Eliz.

*Two named in a Subpœna, the pœna* but one only served; and yet the other

got

got the *Subpœna*, and thereupon got costs, which upon oath of this matter is discharged. *Houlbourne* Plaintiff, *Armorer* and *Lilbourne* defendants. *Anno* 26. Eliz.

*One served, the one gets costs. but discharged.*

An Injunction is granted to stay the Defendants proceedings in the Kings Bench for a debt of 200 l. for not paying the Kings Fine. *Still* Plaintiff, *Greves* Defendant. *Anno* 26. Eliz.

*Injunction for not paying the Kings Fine.*

Upon hearing the matter this present day, it appeareth to this Court, that the cause of the suit was for a pair of gloves which the Plaintiff claimes for a rent; and the Plaintiff made proof the same had been long time paid, but could not know for what lands the gloves were to be paid. And ordered by consent to a triall at Law, where it shall be admitted the gloves are to be paid, as a rent-service for a tenement whereon *Thrussfeild* dwelleth. And as it shall fall upon triall, this Court will take order *Chetwyne* Plaintiff, *Walker* widow, and *Walker* Defendants. *Anno* 26. Eliz.

*A suit for a pair of gloves as a rent-service.*

The Defendant was served with a *Subpœna* by the name of *Langell* without addition, and yet was contented to answer so he might have a *dedimus potestatem* to take his answer in the Countrey, dwelling at *York*, where he is Chancellor to the Arch-Bishop; therefore ordered he should have a Commission to take his answer. *Wilson* Plaintiff, *Longher* Doctor of the Law, and one of the Masters of this Court, defendant. *Anno* 26. Eliz.

*A Master of the Chancery served with Subpœna without his addition is content to answer, so he may have a ded. potestatem.*

Upon oath made that *Tash* did strike the Plaintiff when he served the *Subpœna* upon him; It is ordered that an Attachment be awarded a-

*Upon Attachment that the defendant did beat the plaintiff*

gainst

*upon serving a Subpœna. Attachment is granted.*

against him to appear and to be examined upon Interrogatories touching the contempt, and not to depart after his examination untill he be licensed. *Ruffin* Plaintiff, *Heyward & uxor & Tash* Defendants. *Anno* 26. *Eliz.*

*Ejectione firme brought against a witness to take away his testimony, stayed.*

*Thomas Angrome* as lessee of *Lawrence Angrome* brought an *Ejection firme* against one *Thomas Donwell* and others, which *Thomas Donwell* is one of the principal witnesses for the plaintiff to produce, to take away his testimony; therefore ordered, if the suit at the Common Law against the said *Donwell* be not stayed or withdrawn, that then this Court will order an Injunction for stay of the Defendants suit at Common Law. *William Angrome* plaintiff, *Lawrence Angrome* and *Thomas Angrome* Defendants *Anno* 26. *Eliz.*

*Nusance complained of for stopping the water-course to a Mill.*

The Bill was to be relieved of a Nusance committed by the defendant to the plaintifs Mill by erecting a new Mill, & turning or letting the water-course from serving the plaintiffs Mill; but for that the plaintiff since the Bill exhibited had brought an Assize of Nusance at Law: Therefore the cause is dismissed, if cause be not shewed. *Osburne* plaintiff, *Barter* and *Gedding* Defendants. *Anno* 26. *Eliz.*

*Jurisdiction of Wales not allowed.*

The plaintiff exhibited his Bill into this Court touching lands in the County of *Worcester*, the defendant upon complaint made to the Councel of the Marches of *Wales*, called the plaintif before them, and there he was enjoyned not to proceed in this Court And ordered upon *Affidavit* made upon servir g of Proces, that an Attachment go out against him. And if the plaintiff shall be at any time molested for suing in this Court, then

then an Attachament againſt the Defendant for that contempt. *Croft* Plaintiff, *Alton* and others Defendants. *Anno* 26. *Eliz.*

It was reſolved upon a Caſe referred to the Judges, that if a woman Coppyholder take a husband who commits waſte, this is a forfeiture of the wives eſtate, after the death of the huſband. And that a coppyhold tenement being parcell of the Mannor granted by copy at a Court holden for another Mannor, is void. Sir *Fervis Clifton* Knight. and *George Clifton* Plaintiffs, *Elizabeth Baſſet* widow Defendant. *Anno* 26. *Eliz.*

*A woman in coppyholder take a husband who commits waſte, this a forfeiture of the wives eſtate.*

Upon Maſter *Rotherams* motion witneſſes examined in the Star-Chamber between Sir *Thomas Chamberlain* and *William Bubb*, were allowed to beuſed in this Court. *Engliſh*, Plaintiff, *Chamberlaine* and *Engliſh* Defendants. *Anno* 26. *Eliz.*

*Witneſſes examined in Star-chamber between other parties uſed in this Court.*

One *Robert Barker* coming into the Queens Maj. houſe of White-hal to ſerve the defendant, being an officer there, with a *Subpœna* at the Plaintiffs ſuit; the Defendant cauſed one of the Knight Marſhals men to carry the ſaid *Barker* to the Marſhalſey where he remaineth in priſon, and cannot be relieved unleſs the Plaintiff will be bound to proceed no farther in this ſuit. Therefore a *Corpus cum cauſa* awarded. *Sparks* and others Plaintiffs, *Horden* Defendant. *Anno* 26. *Eliz.*

*One that ſerved a* Subpœna *in the Court at White-hall committed to the Marſhalſey, therefore a* corpus cum cauſa *is granted.*

*John Gueſt* made oath that he ſerved a *Subpœna* on the Defendant, and two of his men or tenants, and the Defendant did beat him with a ſtaffe, and ſtrooke out two of his teeth, and hurt him in the face in divers places. Therefore

*He that ſerved the* Subpœna *was beaten.*

an Attachment is warded against the Defendant. *Giles* plaintiff, *Lackington* Defendant. *Anno* 26, *Eliz.*

*Suit against Sheriff for escape dismissed and retained again, because the defendant may claim Conusance of Plea.*

The matter of the Bill was to be relieved for an escape, for that the defendants being Sheriffs of *Yorke* had arrested one *Newby* at the Plaintiffs suit, and let him go before any judgement given upon the same arrest, or upon the action thereupon commenced. And because a matter of escape is meerly determinable at the Common Law, and the rather being before judgement, because no certainty appears, but the damages ought to be assessed by the Jury, therefore dismissed. *Vavasor* Plaintif, *Maude* and *Belt* Defendants. *Anno* 26 *Eliz.*

*Conusee upon an extent, such the Lessees for years, to know the certainty of their Rents, days of payment, and tearme.*

Motion was made that the Defendants might make a better answer, for that they being Lessees of certain lands, whereof the Plaintiff hath an extent by a Recognisance after their leases; the Defendants shew not by their answers what the rents, times of payments and certainty of their tearmes are without the knowledge whereof the Plaintif is remediless. And ordered that councel on both sides should be present on Saturday, and then order shall be taken touching the answer. *Fisher* Plaintiff, *Foxe* and others Defendants.

*Surmises upon a Prohibition to be proved within sixe moneths,*

It was informed on the Defendants behalf, that the Plaintif about six moneths past obtained a Prohibition out of this Court for stay of the Defendants proceedings in the Spiritual Court for tithes, upon surmise that part of the land out of which the tithes were demanded, were Chauntry lands and discharged of tithes in the Chauntries hands, and so by the Statute ought to be in his, And that some other part of the lands

lands is barren heath and waſte grounds. And the plaintiff hath not made proof of his ſurmiſes, therefore the defendant deſired a conſultation, with his charges according to the Statute, and referred to Doctor *Barkely* to conſider whether the plaintiff had proved his ſurmiſes within ſix moneths. *Bullock* plaintiff, *Wood* defendant. *Anno 26. Eliz.*

*In a Bill to examine witneſſes in perpetual memory, one may not demur.*

The Defendant demurred to a Bill exhibited to examin witneſſes in perpetuall memory, whereas the Defendant ſhould not have demurred to ſuch a Bill, but either aſſented by his anſwer to examine, or ſhowed thereby ſufficient cauſe why witneſſes ſhould not be examined, and leave it to the conſideration of the Court to judge whether the cauſe be ſufficient or no; Therefore ordered the Defendant ſhall withdraw his demurrer, and put in an anſwer, and thereby either aſſent to ſuch examination, or thereby ſhew cauſe to the contrary. *Southall* Plaintiff, *Peryn*, Defendant. *Anno 26. Eliz.*

*The plaintif ſerving the defendant to appear, and then arreſting him, a Superſedeas to diſcharge him, and a Warrant to the Warden of the Fleet to take the plaintif*

The Plaintif ſerved the Defendant to appear, and then arreſted the defendant into the Marſhalſey contrary to the ancient Juriſdiction of this Court, for the free coming and returning. Therefore it is ordered a *Superſedeas* be awarded to diſcharge the Defendant of his arreſt, and the Warden of the Fleet is to apprehend the plaintif, and to bring him into the Court to anſwer his contempt. *Turner* Plaintif, *Randall* Defendant. *Anno 26. Eliz.*

*Forma pauperis*

The Plaintif was ſworne in Court that he was not aſſeſſed in Subſidy the laſt Subſidy, nor is of hability to follow this ſuit; therefore he is admitted in *forma pauperis*, *Warr & uxor*

Plaintiffs, *Middleton*. Defendant. *Anno* 26. *Eliz.*

*No examination allowed in a cross suit after publication in the first.*

After witnesses examined and published in another suit wherein the now Defendant was Plaintiff against the now Plaintiff, then Defendant upon the same title for the lands in question. The now Plaintiff was not allowed to examine witnesses. *Markham* Plaintiffs, *Markham* Defendant. *Anno* 26. *Eliz.*

*Tenant-right in York-shire maintained.*

The Plaintiffs exhibited their Bill to be relieved for certain lands parcell of her Majesties Manner of *Dent* in the County of *York*, which the plaintiffs hold of the nature and kind of tenant-right, and the defendants go about to raise new customes of tenant-right, and do disturb the plaintiffs possession. Forasmuch as it is well known to the Court that the tenant-right is a great number of mens Cases, and much to be favoured in respect of their good and necessary service upon the borders upon any occasion; therefore an Injunction is awarded for the Plaintiffs quiet possession. *Harper* and *Greenwood* Plaintiffs, *Middleton* and *Bainbridge* Defendants. *Anno* 26. *Eliz.*

FINIS.

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[illegible] Laws, fol.
Blount's Law Dictionary, fol.
Kitchin's Justice of Peace, fol.
Rastall's Entries, fol.
Noy's Reports, fol.
Prynn on the Lord Coke's Jurisdiction of Courts, &c.
Bracton de legibus & consuetud. Angliæ, quarto.
Cowell's Interpreter, quarto.
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